IN THE HIGH COURT OF MANIPUR
AT IMPHAL

(I) WP(C) No. 706 of 2009

Md. Abdul Khalique, aged about 30 years,
S/o Md. Abdul Halim of Yairipok Ningthounai Mayai Leikai,
P.O. & P.S. Yairipok, District- Imphal East, Manipur.

…….*Petitioner*

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Govt. of Manipur, Imphal, Manipur.

2. The Director General of Police, Govt. of Manipur, Imphal, Manipur.

3. The Superintendent of Police, Thoubal, Government of Manipur, Imphal, Manipur.

……*Respondents*

(II) WP(C) No. 707 of 2009

Md. Amjad Khan, aged about 35 years,
S/o Late Md. Anjob Ali of Yairipok Bhamon Leikai,
P.O. & P.S. Yairipok, District- Thoubal, Manipur.

…….*Petitioner*

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Govt. of Manipur, Imphal, Manipur.

2. The Director General of Police, Govt. of Manipur, Imphal, Manipur.

3. The Superintendent of Police, Imphal East, Government of Manipur.

……*Respondents*

(III) WP(C) No. 476 of 2013

Shri Tayenjam Munal Singh, aged about 39 years,
S/o (L) T. Tomcha Singh, resident of Yairipok
Yambem Khunou,P.O., P.S. Yairipok and
District Imphal East, Manipur.

…….*Petitioner*

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Govt. of Manipur, Imphal, Manipur.

2. The Director General of Police, Govt. of Manipur, Imphal, Manipur.

3. The Commandant, 2nd India Reserve Battalion, Government of Manipur, Imphal, Manipur.

……*Respondents*

(IV) <u>WA No. 2 of 2013</u>

Md. Warish Khan, aged about 30 years,
S/o Md. Chaoba, resident of Phundrei Awang Leikai,
P.O. Wangjing, P.S. Kakching and District
Thoubal, Manipur.

……*Appellant*

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Govt. of Manipur, Imphal, Manipur.

2. The Deputy Secretary (Home), Govt. of Manipur, Imphal, Manipur.

3. The Director General of Police, Government of Manipur, Imphal, Manipur.

4. The Commandant, 4th India Reserve Battalion, Govt. of Manipur, Imphal, Manipur.

……*Respondents*

(V) <u>WA No. 3 of 2013</u>

Md. Abdur Rahaman, aged about 36 years,
S/o Azizur Rahaman, resident of Yairipok Malom,
P.O. & P.S. Yairipok and District Thoubal, Manipur.

……*Appellant*

-Versus-

1. The State of Manipur, through the Principal Secretary (Home), Govt. of Manipur, Imphal, Manipur.

2. The Director General of Police, Government of Manipur, Imphal, Manipur.

3. The Superintendent of Police, Imphal East District, Govt. of Manipur, Imphal, Manipur.

……*Respondents*

BEFORE
HON'BLE MR.JUSTICE N.KOTISWAR SINGH
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioners/Appellants	::	Mr. T.Rajendra, Advocate, Mr. Kh. Tarunkumar, Advocate, Mr. Th. Khagemba, Advocate.
For the Respondents	::	Mr. H.Raghumani, G.A.
Dates of hearing	::	26.04.2016, 10.05.2016
Date of Reserving Judgment	::	10.05.2016 [summer recess from 22.05.2016 to 05.06.2016]
Date of Judgment & Order	**::**	**06.06.2016**.

JUDGMENT AND ORDER (CAV)

(Justice N. Kotiswar Singh)

Heard Mr. T.Rajendra, Mr. Kh. Tarunkumar, Mr. Th. Khagemba, learned counsel for the petitioners/appellants. Also heard Mr. H.Raghumani, learned Government Advocate for the State respondents.

[2] These three writ petitions, WP(C) No. 706 of 2009, WP(C) No. 707 of 2009 and WP(C) No. 476 of 2013 along with two writ appeals, WA No. 2 of 2013 and WA No. 3 of 2013 are heard together and disposed of by this common judgment and order considering the fact that all these writ petitions/appeals involve similar dismissal orders issued by the authority invoking the same provision of clause (c) to the second proviso to Article 311(2) of the Constitution of India without holding any departmental enquiry against them.

As all the impugned dismissal orders are similarly worded, only the dismissal order in W.P.(C) No. 706 of 2009 is reproduced herein below for reference :

"ORDERS BY THE GOVERNOR : MANIPUR
Imphal, the 31st October, 2009

No. 12/1(14)/08-H(Misc)(C) : Whereas, the Governor of Manipur is satisfied under sub-clause(c) of the proviso to clause (2) of Article 311 of the Constitution

that in the interest of the security of the State it is not expedient to hold an inquiry in the case of Md. Abdul Khalique's (Constable No.988032 of Thoubal District) involvement and association with subversive activities;

2. And whereas, the Governor of Manipur is satisfied that, on the basis of the information available, the activities of Md. Abdul Khalique are such as to warrant his dismissal from service .

3. Accordingly, the Governor of Manipur hereby dismisses Md. Abdul Khalique, Constable No.988032 of Thoubal District from service with immediate effect.

By orders & in the name
of Governor

Sd/-
(Th. Amalkumar Singh)
Deputy Secretary(Home)
Govt. of Manipur

To

Md. Abdul Khalique@ Khalique, Constable No.988032 of Thoubal Distt. S/O Md. Abdul Helim of Yairipok Ningthounai Mayai Leikai, PS-Yairipok, Thoubal District, Manipur.

Copy to:-

1. Secretary to H.E. the Governor of Manipur, Raj Bhavan, Imphal.
2. Secretary to Hon'ble Chief Minister, Manipur.
3. Chief Secretary, Govt. of Manipur.
4. Director General of Police, Manipur.
5. Commissioner (Home), Govt. of Manipur.
6. Inspector General of Police (Admn)/ (L&O-II), Manipur.
7. Supdt. of Police, Thoubal District.- he is requested to please hand over copy of the order to Md. Abdul Khalique, Constable No.988032 of Thoubal District and obtain acknowledgement of receipt and send to State Home Deptt. for record.
8. Guard file."

WP(C) No. 706 of 2009

[3] In WP(C) No. 706 of 2009, the petitioner, Md. Abdul Khalique has challenged the aforesaid dismissal order dated 31.10.2009 issued by invoking the provision under clause (c) of the Second Proviso to Article 311(2) of the Constitution of India.

[3.2] It is the case of the petitioner that the petitioner entered service as a constable having been appointed under order dated 26.10.1998 and had undergone necessary police verification and training. It has been stated that in course of his service, the petitioner was involved in various counter insurgency operations because of which, the petitioner

earned many laurels. In recognition of the commendable service rendered by him, he was recommended to undergo the course on "Counter-Insurgency and Combating Terrorism" w.e.f. 11.9.2006 to 20.10.2006 in the North Eastern Police Academy which he successfully completed. He was also awarded "Good Service Marks". However, to the great shock and surprise to the petitioner, inspite of his meritorious service rendered and having taken part in various counter insurgency operations, the impugned order was issued on 30.10.2009 dismissing him from service without holding any enquiry and informing him of the charges against him on the ground that, it is not expedient to hold an enquiry in the interest of the security of the State by invoking the provisions of clause (c) to the second proviso to sub-clause(2) of Article 311 of the Constitution of India.

[3.3] Mr. Rajendra, learned counsel for the petitioner, has raised several grounds to challenge this dismissal order.

Firstly, it has been contended that the petitioner was never arrested nor was he charged in connection with any criminal case nor any criminal case was pending against him before the issuance of the dismissal order, which clearly indicates that he is not involved in any illegal activity. Thus, it is the contention of the petitioner that if the petitioner was indeed involved in any serious crime or subversive activity, which necessitated the authorities to invoke this extreme provision to dismiss him from service without holding any enquiry, he must have been accused of for involving in some serious crime which was never the case.

[3.4] Secondly, it has been contended that the entire allegations against the petitioner for invoking the said stringent provision as reflected in the affidavit-in-opposition of the state authorities are based on the statement made by one M.I.Khan, who was once a leader of the banned organisation called "Peoples United Liberation Front (PULF)". It has been submitted that apart from the allegations based on the statement made by the said M.I.Khan, who is now a free person, there is no other allegation against the petitioner to warrant any penal action. Thus, except for mere

allegations made by the said M.I.Khan which is uncorroborated, there is no substantive evidence or material at all to support the allegations made against the petitioner of being involved in various crimes which the petitioner has been accused of committing, as detailed in para No. 5 of the affidavit-in-opposition filed by the respondents No.1, 2 and 3. Mr.Rajendra submits that if the petitioner had indeed been found to have indulged in any of the aforesaid serious crimes narrated in the affidavit-in-opposition based on the statement made by M.I.Khan, it would have been natural that he would have been arrested or charged in connection with these crimes. However, the authorities never proceeded against the petitioner by way of filing any case or arresting him in connection with the alleged criminal activities said to have been indulged as disclosed by the said M.I.Khan and in the affidavit-in-opposition filed by the respondents.

[3.5] Mr.Rajendra, further submits that the facts and circumstances as disclosed in the records would clearly reveal that the charges are all baseless. He submits that though the petitioner has been primarily charged of being an active member of the PULF and having committed various criminal activities, he himself was subjected to various kinds of threats and harassments by the same organisation. The petitioner was directed to surrender before the PULF, of which the petitioner has been accused of being a member and working for. He was warned by the PULF to surrender to them as per a newspaper item appearing on 31.01.2008, or else to face dire consequences. That apart, there was an attempt to abduct the petitioner's younger brother by some armed unknown persons. Thus, the petitioner himself was a victim of the armed organisation rather than being a party to its activities. The petitioner submits that these factual aspects would clearly indicate that the charges against the petitioner are not correct and hence, invoking the stringent provision of Article 311(2) second proviso clause (c) of the Constitution of India to dismiss him from service in the present case is not at all warranted. If the petitioner had been at all involved in all the criminal cases or subversive activities as alleged, there is no reason why the State

did not take any action against him by instituting appropriate criminal cases which has not been done in the present case which clearly indicates the innocence of the petitioner.

[3.6] Thirdly, it has been stated that while the dismissal order was issued on 31.10.2009, it has been mentioned in the affidavit-in-opposition of the respondents No.1, 2 and 3 in para No.7(b) that the Governor approved the recommendation of the Committee of Advisors for dismissal of the petitioner only on 24.12.2009. Thus, while the Governor approved the dismissal of the petitioner from service only on 24.12.2009, the dismissal order seems to have been issued earlier on 31.10.2009 which clearly indicates non-application of mind on the part of the authorities while issuing the dismissal order.

[3.7] In this connection, Mr. Rajendra has relied on the decision of the Hon'ble Supreme Court rendered in the case of **A.K.Kaul vs. Union of India**, **AIR 1995 SC 1403** in which it has been stated that exercise of power under clause (c) of the second proviso to Article 311(2) of the Constitution of India is subject to judicial review and the authorities are under obligation to satisfy the Court with the relevant materials as to how the Governor had arrived at the subjective satisfaction to the effect that in the interest of the security of the State, it was not expedient to hold such a inquiry and dismiss an employee. He submits that the materials relied upon by the authorities for issuing the dismissal order are not valid materials in the eyes of law.

[3.8] He also referred to the judgment rendered in the case of **Union of India & anr. vs. M.M.Sharma**, **(2011) 11 SCC 293** reiterating the same principle. He also relied on the decision of the Gauhati High Court passed in **Lungsorei @ Nungsirei Kabui & ors. vs. Special Secretary (Home), Govt. of Manipur & ors.**, **1999 (3) GLT 507** to contend that approval by the Governor by merely recording the single word "approved" does not satisfy the requirement of law. It has been contended that the Governor has to be satisfied personally, and the matter

in which the interest of the security of the State has to be considered should receive the personal attention of the Head of the State and thus, the Governor was required to record a speaking order. It has been contended that in the present case, it has not been recorded that the Governor was personally satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry.

WP(C) No. 707 of 2009

[4] In WP(C) No. 707 of 2009, the petitioner Md. Amjad Khan has challenged his dismissal from service vide impugned order dated 31.10.2009 by the authorities by invoking the provisions of clause (c) of the second proviso to Article 311(2) of the Constitution of India.

Brief facts of the case as pleaded by the petitioner are that the petitioner, after joining his service as a Constable in the year 1998, completed his training in the year 1999 and thereafter, was attached to the Commando Unit of the Imphal West of the Manipur Police Department and was posted in different stations and units of the Police Commando. It has been stated that he had taken part in a number of major counter insurgency operations and in apprehending many hard core extremists.

[4.1] The petitioner states that the petitioner was transferred and posted at Ukhrul P.S. on 17.01.2007, which he could not comply due to illness caused by a bomb attack at his residence, because of which, he was proceeded against in a departmental enquiry. However, on conclusion of the departmental enquiry, the petitioner was honourably acquitted of the charges labelled against him and he was allowed to resume his duty vide order dated 14.02.2008. The petitioner submits that it is on record that because of the hurling of bomb after the transfer order to Ukhrul was passed, he suffered from serious mental disorder and depression for which the petitioner had to undertake medical treatment in the J.N.Hospital w.e.f. 25.01.2007 to 25.6.2007 as clearly mentioned in the order of reinstatement dated 14.02.2008. The petitioner states that pursuant to the transfer order, he proceeded to join his duty at Ukhrul after his treatment

at J.N. Hospital, but he was arrested by the Ukhrul P.S. on 30.06.2007 in c/w with FIR case No.238(10) 2006 u/ss 307/326/427/400 IPC and also for allegation of involvement in the activities of the PULF organisation. He submits that though he was arrested for his alleged involvement in the activities of the PULF organisation, he was charged under section 307 IPC, which is an offence for attempt to murder, Section 326 IPC for the offence which is voluntarily causing grievous hurt by dangerous weapons or means and section 427 IPC which is an offence for mischief causing damage to the amount of fifty rupees and section 400 IPC which is an offence for punishment for belonging to gang of dacoits. Mr.Rajendra submits that though he was accused of being involved in the activities of the PULF organisation, there was no such specific allegation against him in the said FIR. Otherwise, relevant provisions under the UA (P) Act or Arms Act could have been invoked against the petitioner. Thus, it is clearly evident that he was falsely accused in the aforesaid FIR case.

[4.2] The petitioner also states that after he was arrested in connection with the aforesaid FIR case, he was also detained under National Security Act under Order No. Cril/NSA/No.24 of 2007 dated 5.7.2007. Though his detention was subsequently approved by the Government of Manipur on 17.7.2007, he was released on the recommendation of the Advisory Board on 20.8.2007, thus clearly showing that the petitioner is innocent of any such criminal activities labelled against him which formed the basis for issuing the preventive detention order.

[4.3] Mr.Rajendra, learned counsel for the petitioner submits that all the so called materials on the basis of which the order of dismissal was issued under clause (c) to second proviso to Article 311 (2) of the Constitution of India as mentioned in the affidavit-in-opposition were based on the statement made by one M.I.Khan, who is the self styled leader of the PULF. He submits that since the petitioner was involved in various counter insurgency operations in which a number of armed cadres

of the PULF organisation were apprehended, false allegations have been made by the said M.I.Khan out of spite, and as such, the motivated allegations made by M.I.Khan cannot form the basis for the authorities for arriving at their subjective satisfaction as required under clause (c) of the second proviso to Article 311 (2) of the Constitution of India.

[4.4] Mr. Rajendra, learned counsel for the petitioner has also raised a serious objection to the manner in which the impugned dismissal order was issued by the authorities. He contends that without adhering to the procedure laid down in the Office Memorandum dated 16.08.2008, issued by the State authorities laying down the procedure for dealing with cases falling under Article 311(2) Second proviso clause (c), the Director General of Police had requested the Chief Secretary of the Govt. of Manipur for taking up necessary action against the petitioner and some other persons for involvement in subversive activities on 21.6.2008 and thereafter, the Chief Secretary referred the matter to the Committee of Advisors on 10.10.2008 recommending dismissal of the petitioner from service by invoking the provisions of Article 311 (2) Second proviso, clause (c) of the Constitution of India. However, strangely, the competent authority did not act upon the recommendation of the Committee of Advisors promptly but slept over the matter for almost one year and the authority issued the impugned dismissal order only on 31.10.2009. This delayed action on the part of the competent authority to issue the dismissal order clearly indicates that there was, in fact, no clinching evidence and cogent materials for dismissing the petitioner by invoking the provision of Article 311 (2) Second proviso, clause (c) of the Constitution of India. He submits that had the allegations and materials against the petitioner been true and correct, there would have been no hesitation on the part of the authorities to take necessary consequential action promptly soon after the recommendation was made by the Committee of Advisors on 10.10.2008. There was no reason for the authorities to have waited for one year to dismiss the petitioner from service, which indicates that the

competent authority was not convinced of the genuineness of the allegations against the petitioners.

[4.5] Mr. Rajendra, learned counsel for the petitioner also submits that one of the essential requirements of invoking the provision under Article 311(2) Second proviso clause (c) of the Constitution of India is that the Governor himself must arrive at the subjective satisfaction based on the relevant materials to the effect that in the interest of the security of the State, it is not expedient to hold departmental enquiry. Thus, what is required is the active application of mind by the Governor on the materials put up before him and take a conscious decision as to the requirements mentioned in the said Article. However, as clearly mentioned in the affidavit-in-opposition filed by the respondents, the Governor of Manipur merely approved the recommendation of the Committee of Advisors on 24.10.2009. He submits that what is required is not mere giving approval to the recommendation of the Committee of Advisors but taking a conscious decision to arrive at the subjective satisfaction by the Governor to the effect that in the interest of the security of the State, it is not expedient to hold such an inquiry, which must be so recorded in so many words which is clearly missing, as indicated in the affidavit-in-opposition of the respondents authorities. Therefore, Mr.Rajendra submits that there has been clear breach of the requirements of law under Article 311 (2) Second proviso clause (c) of the Constitution of India and hence, the impugned dismissal order is vitiated.

[4.6] As regards the specific allegations made against the petitioner of indulging in subversive activities as detailed in sub-para (D) of para No.6 of the affidavit-in-opposition, viz., collecting taxes from several persons, involvement in Bomb blast, placing and lobbing of hand grenades, etc., Mr. Rajendra, learned counsel for the petitioner submits that all these allegations are false and not credible at all for the following reasons.

Firstly, as regards the allegation of collection of Rs.50,000/-, from one Md.Leihaomou of Yairipok Tulihal, he submits that the victim is none other than the elder brother of the father-in-law of the petitioner. Similarly, Md. Lanjao @ Apik of Yairipok Ningthoumai from whom the petitioner had allegedly collected Rs.80,000/-, is none other than a cousin brother of his wife. Similarly, Md. Ahmed of Yairipok Kekru, from whom a sum of Rs.50,000/- had been allegedly collected is also a cousin of the petitioner. On the other hand, Md. Shahbuddin of Yairipok Bamon Leikai, from whom the petitioner had allegedly collected Rs.10,000/- is a police personnel and also a relative of the petitioner. Therefore, all these allegations of collection of taxes cannot be correct as the petitioner cannot be expected to collect taxes from his own immediate relatives and near and dear ones, which lends credence to his contention that these allegations are nothing but fabricated ones.

As regards the allegation of bomb blast at Babina Diagnostic Centre on 7.10.2006, the petitioner contends that he was actually on duty at Irilbung P.S. which is far away from the said Centre which would belie the said allegation. As regards the other allegations of placing hand grenades and lobbing of hand grenades, it has been contended that these are also fabricated as the petitioner was on duty to some other places on those days.

The petitioner also denied the specific allegation that on 4.2.2007, he met 4(four) cadres of PULF and the activities mentioned in the affidavit-in-opposition. Mr.Rajendra in order to substantiate his contention that the allegations made against him are fabricated draws attention of the Court to the order dated 14.02.2008 issued by the Superintendent of Police issued by the Imphal East District reinstating him in service on conclusion of the departmental enquiry where it had been clearly mentioned that the petitioner was undertaking treatment at J.N.Hospital w.e.f. 25.1.2007 to 25.6.2007. He contends that if the aforesaid fact of undergoing treatment is correct as recorded in the

reinstatement order dated 14.2.2008, the petitioner could not have been involved in various allegations made against him as mentioned in sub-para (j) of sub-para (D) of para No.6 of the affidavit-in-opposition. The Ld. Counsel, therefore, submits that the petitioner, was in fact, a victim of underground activists as he was subjected to bomb attack twice at his residence which is clearly corroborated by the press release issued by the local clubs in the local newspapers contemporaneously.

[4.7] Mr. Rajendra, learned counsel for the petitioner has also relied on the case decided by the Hon'ble Gauhati High Court in **Lungsorei** (supra) in which the Hon'ble Gauhati High Court held as observed in para No.9 to the effect that the Governor has to be satisfied personally that in the interest of the security of the State, it was not expedient to hold the inquiry as contemplated under Article 311(2) second proviso, clause (c) of the Constitution of India and such power of the Governor cannot be delegated to any other authority. Mr.Rajendra, learned counsel submits that in the said of **Lungsorei** (supra), the Chief Secretary made necessary recommendation for taking up action under Article 311(2) (c) of the Constitution of India and the Governor merely approved with the single word "approved" to the recommendation made by the Chief Secretary which was held by the Hon'ble Court to be not in accordance with the requirement of law contemplated under Article 311(2) Second proviso clause (c) of the Constitution of India. It has been contended that in the present case also, as clearly mentioned in the affidavit-in-opposition filed by the State respondents, the Governor had merely approved the recommendation of the Committee of Advisors. If that is so, mere expressing approval to the recommendation of the Committee of Advisors is not in accordance with the law as held by the Hon'ble Gauhati High Court in **Lungsorei** (supra). Accordingly, Mr. Rajendra submits that the impugned order is liable to be set aside on this score alone.

[4.8] Mr.T.Rajendra, learned counsel has submitted that dismissal of an employee amounts to deprivation of livelihood, which is violative of Article 21 of the Constitution of India as right to livelihood forms part of Article 21. Thus, depriving the right to livelihood, after more than one year of the approval by the Committee of Advisors is blatantly arbitrary. He contends that, in fact, this plea was specifically raised in this writ petition, but there was no denial by the State respondents in their affidavit-in-opposition which clearly shows non-application of mind by the state authorities.

WP(C) No. 476 of 2013

[5] In WP(C) No. 476 of 2013, the petitioner, Sri T. Munal Singh has challenged his dismissal from service vide order dated 20.11.2009 issued by the authority by invoking the provision of clause (c) of the second proviso to Article 311(2) by dispensing the departmental inquiry in the interest of the security of the State.

[5.2] Brief facts of the case as pleaded by the petitioner are that the petitioner was recruited as Rifleman in the 2nd India Reserve Battalion in the year 1999 and thereafter, he was discharging his duty diligently to the best of his ability. He states that the problems started in the year 2009 when his minor daughter was admitted for treatment in the Chamber of Commerce Medical Care and Research Centre, Imphal in 2009. He claims that on 11.08.2009, when he came out from the said Hospital to buy medicine for his ailing daughter, all of a sudden a hand grenade exploded just in front of the said Hospital because of which he also ran away for his life. In the process, he was arrested by the Manipur Police Commandos on suspicion of being involved in the said hand grenade explosion. While he was under arrest, he was also detained under the National Security Act, 1980 vide detention order passed on 05.09.2009 by the District Magistrate, Imphal West District. While he was under detention under the National Security Act, 1980, the petitioner was served with the impugned dismissal order dated 20.11.2009.

[5.3] Mr. Tarunkumar, learned counsel for the petitioner submits that the petitioner is innocent and was not involved in any criminal activity as alleged in the affidavit-in-opposition. He submits that the fact that he has been accused of hurling hand grenade in front of the Chamber of Commerce Medical Care and Research Centre, Imphal in the heart of the city is patently false and unbelievable in as much as he was only there for the purpose of treatment of his minor daughter. It is inconceivable that he would throw a hand grenade at the place where his daughter was undergoing treatment. As regards the other allegations of throwing of hand grenade in other hospital, it has been contended that the same are incorrect in as much as he was on active duty in 2nd India Reserve Battalion in his Battalion Headquarter. It has been therefore, submitted that his dismissal on the basis of false and fabricated materials cannot be sustained.

[5.4] He further submits that in the present case also the Governor had merely approved the recommendation of the Committee of Advisors. It has been submitted that it is clearly mentioned in the affidavit-in-opposition of the respondent Nos. 1 and 2 in sub-para 3(iii) of para 7 thereof that the Government of Manipur being satisfied with the recommendation of the Committee of Advisors, approved the recommendation on 26.10.2009 and thereafter, the matter was placed before the Governor and the same was duly approved by the Governor on 10.11.2009. Thus, it is clearly evident from the aforesaid affidavit-in-opposition filed by the State respondents that the Governor merely approved the recommendation which falls short of the requirement of law which mandates that the Governor himself must form the subjective satisfaction based on the materials on record that in the interest of the security of the State, it is not expedient to hold a departmental enquiry which must so recorded in the file.

Mr. Kh. Tarunkumar submits that it is clear from the affidavit-in-opposition that no such subjective satisfaction was arrived at

by the Governor before issuance of the dismissal order. What the materials as disclosed in the affidavit-in-opposition indicate is that the Governor merely accorded his approval to the recommendation made by the Committee of Advisors which is not in accordance with law. Accordingly, it has been submitted that the impugned dismissal order deserves to be interfered with by this Court.

[5.5] Mr. Tarunkumar has also submitted that under the Office Memorandum issued by the State Government on 16.08.2008 that it was incumbent upon the Committee of Advisors to record their opinion that it is not necessary to inform the employee of charges against him and to hear him, however, nothing has been mentioned about such an opinion being recorded by the Committee of Advisors. According to him, it is thus a serious breach of the Office Memorandum which is a part of the procedure to be followed before invoking the provision under Article 311(2)(c) of the Constitution of India and since the same has not been done it vitiates the dismissal order. He submits that the said Office Memorandum is binding on the authorities and violation of the same will vitiate the impugned order. The detail submission of Sri Tarunkumar, Ld. Counsel has been recorded while dealing with W.A. No. 3 of 2013, where similar plea has been raised.

WA No.2 of 2013

[6] In WA No.2 of 2013, the appeal has been preferred against the judgment and order dated 3-9-2012 passed by the learned Single Judge in WP(C) No. 811 of 2009 by which the Learned Single Judge dismissed the writ petition filed by the appellant/petitioner, Md. Warish Khan challenging the dismissal order issued on 31-10-2009 by invoking the provisions of Article 311 (2) second proviso clause (c) of the Constitution of India. The Learned Single Judge after discussing the facts and related law held that there was no infirmity in the dismissal order and accordingly dismissed the writ petition.

[6.2] Mr. Kh. Khagemba, learned counsel for the appellant has assailed the decision of the Learned Single Judge primarily on two grounds.

Firstly, it has been submitted that the Learned Single Judge had erroneously upheld the dismissal order issued by the Deputy Secretary (Home), Government of Manipur which is to be passed by the Governor in exercise the powers under Article 311(2) second proviso clause (c) which cannot be delegated to any other authority. It is thus the case of the petitioner that the dismissal order was not to be issued by the Deputy Secretary, Home, but by the Governor as the power under Article 311(2) second proviso, clause (c) can be exercised only by the Governor himself and none else which can not be delegated.

Secondly, it has been contended that the Learned Single Judge did not deal with the issue as to the legality of the subjective satisfaction which was specifically raised by the petitioner in the writ petition. The appellant claims that there was no material at all before the competent authority to arrive at the subjective satisfaction that it was in the interest of the security of the State that it was not expedient to hold an enquiry against the petitioner. Mr. Th. Khagemba, learned counsel for the appellant contends that the Learned Single Judge did not touch upon this issue at all.

[6.3] Mr. Th. Khagemba submits that it is on record that the petitioner who was earlier serving as rifleman was arrested in connection with an FIR No. 217(12)07 Thoubal PS U/S342/365/506 I.P.C, 25(I-C)A.Act ad 20 U.A(P)Act on the basis of a complaint filed by one Md. Salatur Rahaman. Thereafter, the petitioner was also detained under NSA vide order dated 17-12-2007. However, later on, the petitioner was released from the preventive detention on the recommendation of the Advisory Board vide order dated 3-2-2008 as there was no material to support his detention under the NSA. Mr. Th. Khagemba also states that it is also on record that the said FIR case was closed vide order dated 31-7-

2008 passed by the learned CJM, Thoubal by accepting the final report submitted by the I.O of the case on the ground of insufficiency of evidence. Mr. Kh. Khagemba submits that it is clearly mentioned in the said closure order dated 31-7-2008 that the complainant/informant, Mr. Salatur Rahman appeared before the Court on 28-7-2008 and his statement was recorded who had expressed that he had no objection to the final report submitted by the I.O of the case. In other words, the informant declined to pursue with the complaint and the investigation also revealed insufficiency of evidences. This clearly indicates that the allegations against the petitioner were without any basis. Thus, the petitioner was discharged from the criminal liability and the criminal proceeding against the petitioner was closed. The appellant contends that apart from that, the departmental enquiry which was initiated against the petitioner/appellant on the same set of allegations was also closed by the department vide order dated 21-11-2008. While closing the said departmental enquiry, it has been recorded by the disciplinary authority that the final report had been submitted under FIR No. 217(12)07 Thoubal PS U/S342/365/506 I.P.C, 25(I-C)A.Act ad 20 U.A(P)Act and the criminal proceeding against the petitioner was closed by the Court of CJM, Thoubal indicating that the charge against the petitioner was not proved. Accordingly, the competent authority closed the departmental enquiry by revoking the suspension order and reinstated the petitioner in service. It has been therefore, contended that thus, not only the petitioner was cleared of the charges based on the complaint filed by the informant, Md. Salatur Rahaman, but also released from the detention under NSA as there were insufficient materials and departmental enquiry initiated against the petitioner was also closed. It has been submitted that all these actions initiated against the petitioner were based on the complaint filed by Md. Salatur Rahaman which had been found to be without any basis. However, the petitioner even after being cleared of all the charges as mentioned above, was dismissed from service by invoking the provision of Article 311(2) second proviso, clause (c) of the Constitution.

[6.4] Mr. Th. Khagemba further submits that though reasons have not been mentioned in the dismissal order, the grounds for invoking the said provision are clearly mentioned in the affidavit-in-opposition filed by the respondents. Mr. Th. Khagemba submits that perusal of para 6 of the affidavit-in-opposition will clearly reveal that all these foundational facts are the same set of facts which were the basis for the aforesaid FIR which had been closed as well as for issuing the detention order under NSA and for initiating the departmental enquiry. He, therefore, submits that all these materials which had been found to be baseless as evident from the closure of FIR case, release from preventive detention and closure of departmental enquiry cannot form the material basis for arriving at the subjective satisfaction by the authority for invoking Article 311(2) second proviso clause (c) of the Constitution of India. Mr. Kh. Khagemba, therefore, submits that there was no valid material in eyes of law or if there be any, these are wholly extraneous for invoking provision of Article 311(2) second proviso, clause (c).

In this regard, Mr. Kh. Khagemba has also relied on the decision of the Hon'ble Supreme Court rendered in **M.M Sharma** (supra).

WA No. 3 of 2013

[7] In WA No. 3 of 2013, the appeal had been preferred against the judgment and order dated 3-9-2012 passed in WP(C) No. 687 of 2009.

[7.1] In brief, the case of the appellant Md. Abdur Rahman is that, he was initially appointed as constable in the Manipur Police in the year 2001 and after undergoing necessary training, he was involved in a number of counter insurgency operations in which many insurgents were either apprehended or eliminated. In one such operation, which was jointly carried out with the Assam Rifles on 4-9-2007, three cadres of the banned militant outfit, PULF were killed and a number of sophisticated arms were recovered including one AK-56 rifle, one AK- 47 rifle and one 9mm pistol with live rounds from the slain militants, numbering three. One of the slain militants was identified as Md. Yusuf Ali, who was serving as

the Commander Imphal East District of the said proscribed organisation and who was subsequently identified as the younger brother of the wife of Mr. M.I Khan, the leader of the PULF, who was arrested in Mysore. After he was brought back to Imphal, M.I. Khan was interrogated in which he implicated the appellant.

[7.2] It has been submitted by the appellant that for his outstanding contribution in the counter insurgency operations including the incident mentioned above, the appellant/petitioner was awarded Police Medal for Gallantry on the eve of Independence Day in 2009. Further, considering his excellent service rendered by him he was also recommended for promotion to the higher post of Head Constable in the Manipur Police under the out of turn quota vide order of the Director General of Police, Manipur dated 25-5-2009. However, to his utter shock and surprise, while he was discharging his duty faithfully and sincerely, he was served with the impugned dismissal order dated 31.10.2009 by invoking Article 311(2) second proviso clause (c) of the Constitution of India.

[7.3] Being aggrieved by the aforesaid dismissal dated 31-10-2009, the appellant filed a writ petition being WP(C) No. 687 of 2009 before the Gauhati High Court, Imphal Bench challenging the same which was resisted by the respondent authorities. The aforesaid writ petition was dismissed by the Learned Single Judge by the common judgment and order dated 3-9-2012 against which, the present appellant has preferred this appeal.

[7.4] Mr. Kh. Tarunkumar, learned counsel for the appellant has assailed the aforesaid judgment order of the Learned Single Judge mainly on two grounds.

Firstly, he contends that perusal of the impugned order would show that the Learned Single Judge has not at all dealt with the issue of subjective satisfaction of the Governor which is the core ingredient

of the aforesaid provision. Secondly, nothing has been discussed about the existence of relevant materials which would form the basis for arriving at such subjective satisfaction by the Governor.

[7.5] Elaborating his submissions, Mr. Th. Tarunkumar, learned counsel for the appellant has submitted that the affidavit-in-opposition filed by the State respondents disclosed the materials on the basis of which the aforesaid dismissal order was issued. He submits that all these allegations labelled against the appellant as disclosed in Para 5(B) of the affidavit-in-opposition of the respondents are false and these allegations are entirely based on the statement of M.I Khan, the self styled proscribed leader of the PULF. He submits that it is to be noted that the appellant petitioner was involved in the counter insurgency operation which took place on 4-9-2007 in which the brother-in-law of the said M.I Khan, Md Yusuf Ali was killed. Therefore, the said M.I Khan implicated the appellant was out of malice to settle a score with the appellant for having eliminated his brother-in-law and such uncorroborated allegations made by Mr. M.I Khan cannot be the basis for resorting to this extreme provision of law.

[7.6] Mr. Kh. Tarunkumar, learned counsel for the appellant draws the attention of this Court to the allegation against the appellant that he demanded a sum of Rs. 11 lakhs from one Khamba of Kshetrigao who was the Superintendent Engineer of Electricity Department, Chandel. Mr. Th. Tarunkumar submits that no such Khamba exists in Kshetrigao. Thus, it clearly belies the correctness of the allegation and indicates the fabrication of evidence against the appellant. Mr. Kh. Tarunkumar also submits that it is incomprehensible that the appellant who was awarded police gallantry on the eve of Independence Day in 2009 for exemplary discharge of his duty and was also given out of promotion in the month of May in 2009 to the post of Head Constable would be charged of indulging in such serious activities and be visited with the extreme penalty of dismissal by invoking the provision of Article 311(2), second proviso, clause (c). Mr. Kh. Tarunkumar submits that such an action on the part of

the respondent authorities to dismiss the appellant from service within a month of his being awarded and promoted, on the basis of the uncorroborated allegations made by one person is absolutely unwarranted. He submits that, if the allegations against the appellant were indeed true, the question of his being given award and promoted to higher post would not have arisen.

He categorically denied the allegations that the appellant was involved in these subversive activities as totally false. He submits that, in fact, because of his dedication to service and risk taken, he could not stay in his residence and had to stay in the Commando quarter at Mantripukhri, which is a secured place. Thus, the allegations that he was found involved in illegal activities cannot be accepted. Mr. Kh. Tarunkumar therefore, submits that, there is no material at all for invoking the provisions of Article 311 (2) second proviso clause (c) of the Constitution of India.

[7.7] He also submits that the detail procedures have been laid down in the Office Memorandum dated 18-08-2008 for invoking provision of Article 311(2) second proviso clause (c) of the Constitution of India. He submits that since it is an extreme provision, the authorities have to scrupulously follow the procedures laid down in the said Office Memorandum. He submits that the Govt. of Manipur had framed the said Office Memorandum on 16-8-2008 based on a similar Office Memorandum issued by the Govt. of India on 29-7-1980 which lays down guidelines and procedures to be adopted before invoking the provision of Article 311(2)(c) of the Constitution of India. He submits that as per the aforesaid Office Memorandum, after necessary materials are collected against an employee, the Head of the Department has to furnish the relevant materials to the Administrative Department which after necessary examination, is to forward it to the Department of Personnel who in turn has to forward it to the Committee of Advisors. He submits that the Committee of Advisors, consists of high officials viz., Chief Secretary (Chairman), Principal Secretary (Home), DGP and Secretary of DP, Law

Secretary, Secretary of the concerned Department, Deputy Director (SIB) and members of the Committee of Advisors. The Committee of Advisors which has to decide whether the employee concerned has to be informed of the charges against him and be given an opportunity to furnish his explanation or deny any such hearing in the interest of the security of the State. If the Committee of Advisors forms the opinion that if it is not advisable to inform the person concerned of the materials and charges against him before proceeding further, they have to record such an opinion and put up the matter to the Home Minister who in turn would place it before the Chief Minister for his approval.

[7.8] Mr. Kh. Tarunkumar submits that in the present case the aforesaid procedure postulated under Office Memorandum issued on 16-8-2008 was not adhered to. Mr. Kh. Tarunkumar referring to the para 5(B) of the affidavit-in-opposition filed by the State respondents submits that the matter was straight away put up by the office of the DGP to the Chief Secretary and subsequently put up to the Chief Minister and thereafter to the Governor, which is in violation of the aforesaid procedure laid down. Mr.Kh. Tarunkumar submits that such a procedure adopted by the respondent authorities which is in violation of the aforesaid Office Memorandum has caused prejudice to the appellant thus, vitiated the impugned action. He submits that it was incumbent upon the authorities to have conformed to the aforesaid procedure which are in similar lines as the guidelines issued by the Govt. of India.

[7.9] Mr. Kh. Tarunkumar submits that the Hon'ble Supreme Court in **Union of India and Anr Vs Balbir Singh**, **AIR 1998 SC 2043** has discussed the importance of the procedure laid down in the Office Memorandum issued by the Government of India on which basis the State Government issued the Office Memorandum dated 16.08.2008, and submits that only when such procedure had been followed by the competent authority mentioned herein, that the order of dismissal under the provision of Article 311(2) second proviso clause (c) could be issued.

Mr. Kh. Tarunkumar submits that nothing is disclosed in the affidavit-in-opposition filed by the State respondents to the effect that the Committee of Advisors which was to record the crucial decision as to whether it is advisable to inform the appellant of the charges against him or not, had not at all taken such a decision, thus causing serious prejudice to the appellant. He therefore, contends that since the aforesaid procedure laid down in the Office Memorandum dated 16-8-2008 had not been followed, as clearly evident from the affidavit-in-opposition filed by the State respondents, the impugned dismissal order is vitiated.

[7.10] Mr. Kh. Tarunkumar further submits that as has been held by the Hon'ble Supreme Court in **S.R Bommai, & Ors. vs Union of India**, **(1994) 3 SCC 1** the subjective satisfaction of the Governor in the present case has to be based on relevant materials. He submits that, there has to be relevant materials for the Governor to come to the subjective satisfaction that there are materials available to do away with the holding of enquiry in the interest of the security of the State. Mr. Kh. Tarunkumar submits that as the materials as mentioned in the affidavit-in-opposition which form the basis for such satisfaction are all concocted and unsubstantiated, and were based on the statement made at the instance of the person who is biased against the appellant, the impugned order is vitiated. Accordingly, Mr. Kh. Tarunkumar submits that the impugned dismissal order is liable to be interfered with and the judgment and order of the Ld. Single Judge also liable to be set aside.

Contentions of the State Government

[8] Mr.Raghumani, learned Government Advocate strongly opposed the contentions raised by the petitioners/appellants. He has also produced the relevant records and submitted that perusal of these records would clearly indicate that there were sufficient materials before the competent authority to arrive at the subjective satisfaction that it was not expedient to hold an enquiry against any of these petitioners/appellants in the interest of the security of the State. Mr.Raghumani, learned GA has

submitted that it is not correct that the allegations made against the petitioners in W.P(C) No. 706 of 2009, WP(C) No. 707 of 2009 and W.A. No. 2 of 2013 and W.A. No. 3 of 2013 are based only on the statement made by Mr. M.I.Khan but there are other materials also which form the basis for taking the decision and issuing the impugned dismissal orders.

[8.2] He submits that law does not require reasons to be disclosed to the employee concerned and it will be sufficient if adequate reasons are disclosed in or discernible from the records for invoking the provisions of Article 311 (2) second proviso, clause (c) of the Constitution of India, which according to him, are sufficiently recorded. He also submits that while exercising the power of judicial review, this Court ought not go into the correctness or otherwise of the allegations made against the petitioners/appellants. He submits that whether materials as available in the records are sufficient to arrive at the subjective satisfaction of the authority, or not, is also beyond the scope of judicial review.

Mr.Raghumani, learned GA by referring to the decision in **Balbir Singh's** case (supra) has stated that whether a person has been acquitted in the criminal case or whether he is not formally charged in any criminal case is immaterial and if the authorities come to a conclusion that on the basis of the materials available from various sources against a person, holding of inquiry is not expedient in the interest of the security of the State, and depending on the gravity of the allegations, the authority can invoke the power Article 311(2) second proviso, clause (c) of the Constitution of India to dismiss a person.

[8.3] Mr.Raghumani, learned GA has also denied that the procedure laid down in the Office Memorandum dated 16.8.2008 had not been duly followed, as clearly evident from the records produced before this Court. It has been submitted that all the important functionaries mentioned in the Office Memorandum had been consulted and the High Power Committee of Advisors had recorded their opinion as regards the non-advisability of holding an inquiry and also their recommendation for

dismissal without holding any inquiry in the interest of the security of the State.

[8.4] He further has stated that delay in issuing the order of dismissal after the same was recommended by the Committee of Advisors is not fatal as there is no specific bar laid down under any rule or law or in the said Office Memorandum that the recommendation of the Committee of Advisors cannot be given effect to after certain period. Thus, as regards the contention raised by Mr.T.Rajendra, learned counsel for the petitioner (in W.P.(C) No. 707 of 2009) that the dismissal order was issued on 31.10.2009 though the recommendation was made by the Committee of Advisors more than one year ago on 10.10.2008, Mr.Raghumani, learned GA submits that there is nothing unusual about the delay as the matter had to be considered minutely and in the absence of any limitation placed, the delay in issuing the dismissal order is not fatal.

[8.5] Mr.Raghumani, learned GA also has contended that it is not correct that in the present cases, the power of Governor had been delegated to some other authority while issuing the impugned dismissal orders. He submits that in terms of the Rules of Business framed by the Governor of Manipur under Article 166 of the Constitution of India, the authorised officials are competent to issue the orders in the name of the Governor. As per Rule 55 of the Rules of Business framed by the Governor, all the matters relating to dismissal from service by invoking the provisions of clause (c) of Second proviso to Article 311 of the Constitution of India has to be referred to the Governor and once the same is approved by the Governor, the dismissal order can be issued by any of the authorised officials in terms of Rule 11 of the Rules of Business which provides that every order or the instrument of the Government shall be signed either by a Secretary, Special Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary and Under Secretary to the Government of the State or such other officers as may be specifically empowered on their behalf. In the present cases, the impugned dismissal

orders had been issued by the authorised functionary i.e., the Deputy Secretary of the Home Department in terms of the Rules of Business in the name of the Governor and as such, there is no delegation of power of the Governor while issuing the impugned dismissal orders. Mr.Raghumani, learned GA also has submitted that as per Rules of Business or any other provision of law or any other Office Memorandum, it is not required for the Governor to put his personal opinion or reasons for arriving at his subjective satisfaction as contemplated under clause (c) to the second proviso to Article 311 (2) of the Constitution of India.

[8.6] Coming to the decision of the Hon'ble Gauhati High Court in **Lungsorei** (supra), heavily relied on by the petitioners/appellants in contending that it is not sufficient for the Governor to merely approve the proposal for dismissal of an employee under Article 311 (2) second proviso, clause (c) of the Constitution of India, Mr.Raghumani, learned GA has submitted that it is only when the Governor disagrees with the proposal of the Committee of Advisors that he is required to give reasons and not otherwise.

[8.7] Mr.Raghumani, learned GA also further contended that the appellants in the writ appeals had abandoned all the pleas except the plea that the dismissal order was issued in gross violation of the provisions of clause (c) to the second proviso to Article 311(2) of the Constitution of India as recorded in para No.9 of the judgment and order of the learned Single Judge. Mr.Raghumani, learned GA, therefore, submits that the appellants are barred from raising such other contentions before this Court.

[8.8] Mr.Raghumani, learned GA also has submitted that the present case is squarely covered by the decision of this Court rendered in **State of Manipur & Ors. Vs. Sri Potsangbam Maniratan, (2015) 4 NEJ 674 (Man.)** and accordingly, all these writ petitions and writ appeals are liable to be dismissed.

Reply by the petitioners/appellants

[9] Controverting contentions of the Ld. Govt. Advocate, Mr.Kh.Tarunkumar, learned counsel for the petitioner/appellant has submitted that the judgment and order relied on by the Government in **Potsangbam Maniratan** (supra) is not applicable in the present case as the facts were entirely different. In the said case, the petitioner therein had admitted to have been a member of a proscribed organisation which fact, he had concealed while applying for appointment in the police department. However, in the present case, there is no such admission by any of the petitioners or appellants of having been a member of a proscribed organisation and allegations against the petitioners/appellants were based on uncorroborated statement of another person who himself was a member of a proscribed organisation.

[9.1] Mr.Tarunkumar further submits that there has been no abandonment of any plea, and relying on the decision in **Bongaigaon vs. Girish Chandra Sharma, (2007) 7 SCC 206**, he contends that even if there has been any abandonment, it can be always raised in appeal.

[9.2] Mr.Tarunkumar also has submitted that the Office Memorandum dated 16.8.2008 is binding upon the respondents authorities and if it is violated to the prejudice of the employee, any action taken in violation of such executive instruction would be vitiated as held by the Hon'ble Supreme Court in **State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others,** (**1977) 4 SCC 345.** He further submits that perusal of the judgment and order in **Balbir Singh**'s case (supra) would clearly indicate that Hon'ble Supreme Court had emphasised the importance of the guidelines laid down in the Office Memorandum issued by the Govt. of India which has been adopted by the Government of Manipur by issuing the aforesaid Office Memorandum dated 16.8.2008 and as such, violation of this executive instruction notified in the form of Office Memorandum is fatal. Mr.Tarunkumar has also relied on the decision of **Tulsi Ram Patel** (supra) and contended that the issue relating to the interest of the

security of the State are much more grave than the problems relating to law and order. He submits that only such matters which fatally affect the security of the State come within the purview of the expression "security of the State". It has been contended that in the present case, all the allegations against the petitioners/appellants, even if, considered correct, merely relates to law and order and not to security of the State. It has been contended that in fact, in the case of appellant, **Md. Barik Khan** (**in WA No.3 of 2013**), all the possible inquiries had been conducted and he had been honourably discharged from the accusations of involvement in criminal activities. The grounds which formed the basis for issuing the impugned dismissal orders, were also the grounds for issuing the detention order under National Security Act (NSA) in respect of appellant Md. Barik Khan, but the detention order was revoked as the grounds were found to be unsubstantiated. Therefore, if the allegations against the appellants were found to be insufficient to attract any criminal proceeding or to detain him under the National Security Act, it is incomprehensible how the same set of grounds could be used for passing the impugned dismissal orders. Accordingly, it has been submitted that the impugned orders were issued without any basis.

[9.3] Mr.Tarunkumar referring to the decision of the Hon'ble Supreme Court in **A.K.Kaul** (supra) in para No.9 thereof has submitted that the Governor has to form his opinion as to whether it is expedient not to hold an inquiry in the interest of the security of the State. Mr. Tarunkumar contends that unless such an opinion of the Governor is recorded in the file, it will not be possible for this Court to examine whether the Governor had indeed reached such a satisfaction and that he had applied his mind. Further, relying on the aforesaid decision of **A.K.Kaul** (supra) and **Tulsiram Patel** (supra), Mr.Tarunkumar contends that it has been held by the Hon'ble Supreme Court that the Governor has to bear in mind while exercising the power under Article 311 (2) second proviso, clause (c) of the Constitution of India, the distinction between the situation which affects the security of the State and the situation which

affects the public order for the purpose of arriving at a subjective satisfaction for the purpose of passing the order under clause (c) to second proviso to Article 311 (2) of the Constitution of India. The President or the Governor can take into consideration only such circumstances which have a bearing on the interest of the security of the State and not on situations having a bearing on law and order or public order. The satisfaction of the President or the Governor would thus be vitiated if it is based on circumstances having no bearing on the security of the State. Mr. Tarunkumar has also submitted by referring to para No.24 of **A.K.Kaul** (supra) that the President or the Governor has to satisfy about the expediency of not holding an inquiry as prescribed under clause (c) to second proviso to Article 311(2)of the Constitution of India. Therefore, Mr. Tarunkumar has strenuously contended that unless these aspects are put on record by the Governor himself, it can not be said that there was application of mind by the Governor and mere granting of approval with the single word "approved" will not meet the requirements of law.

[9.4] Referring to para No.18 of the decision of the Honb'le Supreme Court in **M.M.Sharma** (supra), it has been submitted that as regards the satisfaction required under sub-clause (c) of the second proviso to Article 311(2) of the Constitution of India is concerned, unless and until it is recorded that such a satisfaction is based on reasonable, sufficient and cogent materials, it would not be possible for the Court or the Tribunal, where such illegality or order is challenged, to ascertain as to whether such an order passed in the interest of the security of the State is based on valid reasons and not arbitrarily. It can, therefore, be clearly stated that the Governor has to record the reasons in the file, failing which any order of dismissal based on the aforesaid provision of the Constitution of India would be illegal.

Legal position :

[10] As the common thread running through these petitions/appeals originates from the provision of Article 311(2) Second proviso, clause (c) of the Constitution of India, it may be apposite to revisit the law governing the aforesaid provision of the Constitution. As provided under Article 310 of the Constitution, civil employees of the Union or the States hold their posts at the pleasure of the Government and their services are terminable at the will of the President or Governor under the doctrine of pleasure. However, the Constitution also has placed certain limitations when it concerns dismissal, removal or reduction in rank as provided under Article 311 of the Constitution, providing security and safeguards to the civil servants/employees. These limitations are :

i) Such an employee shall not be dismissed or removed by the authority subordinate to that by which he was appointed.

ii) Such an employee can not be dismissed, removed from service nor his rank reduced without holding an enquiry and giving him a reasonable opportunity of being heard.

However, the second safeguard provided for holding an enquiry before dismissal or removal or reduction in rank and entitlement to *audi alteram partem*, is not available under three situations, as provided under the clauses (a), (b) and (c) of second proviso to sub-clause (2) of Article 311 of the Constitution as follows.

a) Under clause (a) of the second proviso, a person can be dismissed or removed or reduced in rank without holding any enquiry, on the ground of misconduct which has led to his **conviction on a criminal charge**.

b) The holding of enquiry also can be dispensed with 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 reasonable to hold such an enquiry as provided under clause (b).

c) It will also not be required to hold an enquiry where the President or the Governor, as the case may be, is satisfied that **in the interest of security of the State, it is not expedient to hold such an enquiry**, under clause (c).

Thus, though normally, a person cannot be dismissed or removed from service or reduced in rank except by holding a departmental enquiry and giving him reasonable opportunity of being heard, as provided under clause (2) of Article 311 of the Constitution of India, yet holding of enquiry can be dispensed with under three situations as mentioned above.

[11] In the present case, we are concerned only with the third situation as provided under clause (c) of the second proviso to clause (2) of Article 311 under which the petitioners/appellants were dismissed from service without holding any enquiry as the Governor of the State was of the opinion that it was not expedient to hold enquiry in the interest of the security of the State before dismissing them from service. Therefore, we would restrict ourselves to the relevant laws which govern the aforesaid provision of the Constitution and examine as to whether in the present cases, the aforesaid provision of the Constitution dispensing with the holding of enquiry had been properly applied or not.

[12] There has been a series of landmark judicial pronouncements by the Hon'ble Supreme Court relating to the said provision, beginning with the case of **Sardari Lal Vs Union of India, 1971(3) SCC 461 : 1971 (1) SCC 411** followed by the Constitution Bench decision in **Shamsher Singh Vs State of Punjab 1974 (2) SCC 831** and relied in later decisions.

[13] In **Sardari Lal** (supra), the Hon'ble Supreme Court held that the satisfaction of the President or the Governor under Article 311 (2) second proviso, clause (c) is his personal satisfaction. Thus, it was held that unless the President or the Governor ***himself*** reaches such a satisfaction as to the expediency of not holding enquiry in the interest of the security of the State, any order passed by invoking the said provision of Article 311 will be vitiated. The Hon'ble Supreme Court in that case took the view that, a matter in which the interest of the security of the State had to be considered, should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient for the reasons stated in clause (c) of the proviso in the case of a particular civil servant. It was further held that this function could not be delegated or allocated to anyone else by the President or the Head of the State.

[14] This decision in **Sardari Lal** (supra) was, however overruled by the Constitution Bench decision in **Shamsher Singh** (supra). The Hon'ble Supreme Court in **Shamsher Singh** (supra) elaborately discussed the principles of law *qua*, the role and the power of the President and the Governor keeping into consideration the parliamentary form of governance, where the Cabinet plays a vital role as in Britain, which has been adopted in India, as opposed to the Presidential form of governance as followed in the United States of America, and held that unless the provisions of the Constitution expressly require the President or the Governor to exercise his powers in his discretion, the President or the Governor has to act on the advice of the Council of Ministers. Based on the aforesaid principle, it was held that the satisfaction of the President or the Governor as mentioned in clause (c) of the second proviso to sub-clause (2) of Article 311 is to be arrived at on the advice of the Council of Ministers as provided under Article 163 of the Constitution, and actions have to be taken/ executed in the name of the Governor in terms of the rules of business framed by the Governor as provided under Article 166 of

the Constitution of India. In this regard, it may be apposite to reproduce the relevant portions of the judgment in **Shamsher Singh** (supra) as follows:

> "**28**. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.
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> **29.** The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123, viz., ordinance making power and all powers and functions of the Governor except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the government of the State under clause (1) of Article 166. The expression "Business of the government of India" in clause (3) of Article 77, and the expression "Business of the government of the State" in clause (3) of Article 166 includes all executive business.
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> **30**. In all cases in which the President or the governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his council of Ministers he does so by making rules for convenient transaction of the business of the government of India or the government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the governor for the exercise of any power or function by the President or the governor, as the case may be. as for example in Articles 123, 213, 311(2) proviso (c), 317. 352(1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the governor but is the satisfaction of the President or of the governor in the constitutional sense under the Cabinet system of government. The reasons are these. It is the satisfaction of the council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the governor under Article 166(3) shall make rules for the more convenient transaction of the business of the government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the

> Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles, viz.. Article 77(3) in the case of the President and Article 166(3) in the case of the governor of the State is the decision of the President or the governor respectively.
>
> **31.** Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the governor. that the executive power shall be exercised by the President or the governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the governor that there shall be a council of Ministers to aid and advise the President or the governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the government in the name of the President or the governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halsbury's Laws of England 4th Ed.. Vol. 1. paragraph 748 at p. 170 and Carltona Ltd. v. Works Commissioners[1])
>
> **(*emphasis added*)**
>
> [1] (1943) 2 All ER 560".

[15] The Hon'ble Supreme Court again clarified the aforesaid legal position as regards the said provision of Article 311(2) in **Union of India Vs. Tulsiram Patel, (1985) 3 SCC 398** in para 59 thereof, as follows:

> **"59.** The position, therefore, is that the pleasure of the President or the Governor is not required to be exercised by either of them personally, and that is indeed obvious from the language of Article 311. Under clause (1) of that article a government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Clause (*b*) of the second proviso to Article 311 equally makes this clear when the power to dispense with an inquiry is conferred by it upon the authority empowered to dismiss, remove or reduce in rank a government servant in a case where such authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, because if it was the personal satisfaction of the President or the Governor, the question of the satisfaction of any authority empowered to dismiss or remove or reduce in rank a government servant would not arise. Thus, though under Article 310(1) the tenure of a government servant is at the pleasure of the President or the Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the

> Council of Ministers or by the authority specified in Acts made under Article 309 or in rules made under such Acts or made under the proviso to Article 309; and in the case of clause (*c*) of the second proviso to Article 311(2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers."
>
> ***(emphasis added)***

[16] The Hon'ble Supreme Court in **Tulsiram Patel**'s case went on to elaborately explain the conditions which must be satisfied before invoking any of the exceptional clauses of the second proviso under Article 311(2). It held that, the second proviso to clause (2) of Article 311 can be applied only when the conduct of the Govt. servant is such that he deserves the extreme penalty of dismissal/removal or reduction in rank. However, before imposing any of the aforesaid penalties, the requirement of holding an enquiry and following *audi alteram partem* as contemplated under Article 311 (2) can be dispensed with only under three situations as provided under clauses (a), (b) and (c) of the second proviso to Sub-clause (2) of Article 311. Since, we are not concerned with the situations contemplated under clauses (a) and (b), but under clause (c), we confine our discussion on the law relating to clause (c).

As to when clause (c) of the second proviso to Article 311(2) can be invoked has been elucidated by the Hon'ble Supreme Court in **Tulsiram Patel'**s case (supra) by holding that the prime consideration for invoking the said clause (c) is the expediency or inexpediency of not holding the enquiry which must be related to the interest of the security of the State. Thus, satisfaction of the President or the Governor must, be with respect to the expediency or inexpediency of holding enquiry in the interest of the security of the State. This satisfaction of the Governor, which, however, has to be arrived at with the aid and advice of the Council of Ministers, is on the issue that it would not be advantageous or fit or proper or suitable in the interest of the security of the State to hold an enquiry. Such a satisfaction may be reached because of the secret information received by the Govt. and making known such information

may result in the disclosure of the source of information which may be prejudicial to the interest of the security of the State. The Hon'ble Supreme Court went on to observe that the reasons for arriving at such satisfaction by the President or the Governor under clause (c) is not required to be recorded in the order of dismissal, removal or reduction in rank nor can be made public as held in para 141, 142 and 143 of the judgment in **Tulsiram Patel**'s case which read as follows:

> "**141.** The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

…….
…….....

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate to them.

142. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2).The satisfaction of the President or Governor must, therefore be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable impolitic." The same dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case." Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end : fit, proper, or advantageous under the circumstances." It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the Constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making, known such information may very often result in disclosure of the source of such information. Once known, the particular source from

> which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.
>
> **143. ……**
> **…….**
>
> **144.** It was further submitted that what is required by clause (c) is that the holding of the inquiry should not be expedient in the interest of the security of the State and not the actual conduct of a government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that in an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a government servant in such acts, would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would."
>
> **(emphasis added)**

[16] The scope of judicial review in respect of an order issued under Article 311 (2) second proviso, clause (c) came to be examined by the Hon'ble Supreme Court again in **A.K Kaul Vs. Union of India AIR 1995 SC 1403** case (supra) and reiterated the law laid down in **Tulsiram Patel'**s case. In **A.K. Kaul** (supra) the Hon'ble Supreme Court keeping in mind the earlier decision in **S.R. Bomai** (supra) as regards justiciability of the satisfaction of the President in the matter of exercise of power under Article 356 of the Constitution of India, took the view that similar parameters would be applicable for examining the validity of action taken under clause(c) of the second proviso of Article 311(2) by observing that such an order would be subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President/Governor is vitiated by malafide or based on wholly extraneous or irrelevant grounds within the limits laid down in **S.R. Bomai** (supra). Thus, it was held in **A.K. Kaul** (supra) that, in a case where the authority passed an order under clause (c) of the second proviso to Article 311(2) which is challenged before the Court or Tribunal, the Court or the Tribunal has to examine whether the satisfaction arrived at by the

President/Governor is vitiated by malafides or is based on wholly extraneous or irrelevant grounds and for that purpose, the Governor is obliged to place before the Court or the Tribunal the relevant materials on the basis of which the satisfaction was arrived at, subject to claim of privilege under section 123 and 124 of the Evidence Act to withhold particular documents or records. Even in such cases, where such a privilege is claimed, the Govt. concerned must disclose before the Court or Tribunal the nature of the activities in which the Govt. employee is said to have been indulged in as mentioned in para No. 31 which are reproduced hereinbelow:

> "**31.** In our opinion, therefore, in a case where the validity of an order passed under clause (c) of the second proviso to Article 111(2) is assailed before a court or a Tribunal it is open to the court or the Tribunal to examine whether the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds and for that purpose the Government is obliged to place before the court or tribunal the relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record. Even in cases where such a privilege is claimed the Government concerned must disclose before the Court or tribunal the nature of the activities in which the Government employee is said to have indulged in."

[17] The decision in **A.K. Kaul** (supra) regarding the scope of judicial review on the subjective satisfaction of the Governor was largely based on **S.R. Bommai** (supra). It may therefore be appropriate to refer to the relevant paragraphs in **S.R. Bommai** (supra) which have been also referred in **A.K. Kaul** (supra).

The nine judges Constitution Bench in **S.R. Bommai** (supra) spoke through six voices of Hon'ble Justice Pardian, Hon'ble Justice Ahmadi, Hon'ble Justice Verma (for himself and Hon'ble Justice Yogeshwar Dayal), Hon'ble Justice Sawant (for himself and Hon'ble Justice Kuldip Singh), Hon'ble Justice Jeeven Reddy (for himself and Hon'ble Justice Agarwal), and Hon'ble Justice Ramaswami.

Some of the relevant paragraphs in the judgment of **S.R. Bommai** (supra) may be reproduced hereinbelow:

Per Hon'ble Justice Sawant (for himself and Hon'ble Justice Yogeshwar Dayal) :

> **"74.** From these authorities, one of the conclusions which may safely be drawn is that the exercise of power by the President under Article 356(1) to issue Proclamation is subject to the judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution. Needless to emphasise that it is not any material but material which would lead to the conclusion that the Government of the State cannot be carried on in accordance with the provisions of the Constitution which is relevant for the purpose. It has further to be remembered that the article requires that the President "has to be satisfied" that the situation in question has arisen. Hence the material in question has to be such as would induce a reasonable man to come to the conclusion in question. The expression used in the article is "if the President … is satisfied". The word "satisfied" has been defined in *Shorter Oxford English Dictionary* (3rd Edn. at p. 1792):
>
> > "4. To furnish with sufficient proof or information, to set free from doubt or uncertainty, to convince; 5. To answer sufficiently (an objection, question); to fulfil or comply with (a request); to solve (a doubt, difficulty); 6. To answer the requirements of (a state of things, hypothesis, etc.); to accord with (conditions)."
>
> Hence, it is not the personal whim, wish, view or opinion or the *ipse dixit* of the President dehors the material but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of or has to have sufficient proof of information with regard to or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review.
>
> ***(emphasis added)***

Per Hon'ble Justice Jeeven Reddy (for himself and Hon'ble Justice Agarwal) :

> **374.** Without trying to be exhaustive, it can be stated that if a Proclamation is found to be mala fide or is found to be based wholly on extraneous and/or irrelevant grounds, it is liable to be struck down, as indicated by a majority of learned Judges in the *State of Rajasthan*[3]. This holding must be read along

with our opinion on the meaning and scope of Article 74(2) and the further circumstance that clause (5) which expressly barred the jurisdiction of the courts to examine the validity of the Proclamation has been deleted by the 44th Amendment to the Constitution. In other words, the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material. It will also not substitute its opinion for that of the President. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some *relevant* material sustaining the action. The ground of mala fides takes in inter alia situations where the Proclamation is found to be a clear case of abuse of power, or what is sometimes called fraud on power — cases where this power is invoked for achieving oblique ends. This is indeed merely an elaboration of the said ground. The Meghalaya case, discussed hereinafter, demonstrates that the types of cases calling for interference cannot either be closed or specified exhaustively. It is a case, as will be elaborated a little later, where the Governor recommended the dismissal of the Government and dissolution of the Assembly in clear disregard of the orders of this Court. Instead of carrying out the orders of this Court, as he ought to have, he recommended the dismissal of the Government on the ground that it has lost the majority support, when in fact he should have held following this Court's orders that it did not. His action can be termed as a clear case of mala fides as well. That a Proclamation was issued acting upon such a report is no less objectionable.

(emphasis added)

Per Hon'ble Justice Ramaswami:

227. These conclusions do not reach the journey's end. However, it does not mean that the court can merely be an onlooker and a helpless spectator to exercise of the power under Article 356. It owes duty and responsibility to defend the democracy. If the court, upon the material placed before it finds that the satisfaction reached by the President is unconstitutional, highly irrational or without any nexus, then the court would consider the contents of the Proclamation or reasons disclosed therein and in extreme cases the material produced pursuant to discovery order nisi to find the action is wholly irrelevant or bears no nexus between purpose of the action and the satisfaction reached by the President or does not bear any rationale to the proximate purpose of the Proclamation. In that event the court may declare that the satisfaction reached by the President was either on wholly irrelevant grounds or colourable exercise of power and consequently Proclamation issued under Article 356 would be declared unconstitutional. The court cannot go into the question of adequacy of the material or circumstances justifying the declaration of President's rule. Roscoupoun in his *Development of the Constitutional Guarantees of Liberty*, 1963 Edn. quoted Jahering that, "Form is sworn enemy of caprice, the twin sisters of liberty, fixed forms are the school of discipline and order and thereby of liberty itself." The exercise of the discretion by the President is hedged with the constitutional constraint to obtain approval of Parliament within two months from the date of the issue, itself is an assurance of proper exercise of the power that the President exercises the power properly and legitimately that the administration of the State is not carried on in accordance with the provisions of the Constitution.

> **260.** The decision can be tested on the ground of legal mala fides, or high irrationality in the exercise of the discretion to issue Presidential Proclamation. Therefore, the satisfaction reached by the President for issuing the Proclamation under Article 356 must be tested only on those grounds of unconstitutionality, but not on the grounds that the material which enabled him to reach the satisfaction was not sufficient or inadequate. The traditional parameters of judicial review, therefore, cannot be extended to the area of exceptional and extraordinary powers exercised under Article 356. The doctrine of proportionality cannot be extended to the power exercised under Article 356. The ultimate appeal over the action of the President is to the electorate and judicial self-restraint is called in aid, in which event the faith of the people in the efficacy of the judicial review would be strengthened and the judicial remedy becomes meaningful.
>
> ***(emphasis added)***
>
> [3] (1977) 3 SCC 592 : AIR 1977 SC 1361 : (1978) 1 SCR 1"

[18] Though in **Bommai**'s case, the Hon'ble Supreme Court had emphatically stated that the sufficiency or correctness of the materials will not be examined by the Court in the process of judicial review, the subsequent Constitution Bench (consisting of five judges) in **Rameshwar Prasad and Ors. Vs. Union of India and Anr., (2006) 2 SCC 1**, had further gone ahead and observed that the Court will also examine whether the facts have been verified or not as held in para 140 which is reproduced hereinbelow:

> **"140.** Thus, it is open to the Court, in exercise of judicial review, to examine the question whether the Governor's report is based upon relevant material or not; whether it is made bona fide or not; and whether the facts have been duly verified or not. The absence of these factors resulted in the majority declaring the dissolution of the State Legislatures of Karnataka and Nagaland as invalid."
>
> ***(emphasis added)***

In the opinion of this Court, the aforesaid observation has been made as an additional mechanism to ensure that the facts are really genuine and authentic. This however, does not mean that the Court itself will verify it. The Court will examine whether such facts had been subjected to some kind of verification process so as to ensure their genuineness as clause (c) to the second proviso to sub-clause (2) of Article 311 of the Constitution is a provision of an extreme character denuded of any scope of statutory appeal or revision.

[19] In the light of the above, the principles thus enunciated by the Hon'ble Supreme Court as regards the application of clause (c) to second proviso to Article 311(2) which have been consistently followed in subsequent cases may be summarised as follows:

i) The pleasure of the President or the Governor in arriving at the subjective satisfaction that in the interest of the security of the State it is not expedient to hold an enquiry as contemplated under clause (c) of the second proviso to sub-clause (2) of Article 311 is not a personal satisfaction of the President or the Governor, but, is a satisfaction to be arrived at with the aid and advice of the Council of Ministers.

ii) Any order of dismissal or removal or reduction in rank invoking the aforesaid provision is justiciable and can be examined by the Court as to whether such a satisfaction of the President or Governor is vitiated by malafide or is based on wholly extraneous or irrelevant grounds.

iii) To examine the aforesaid, the Govt. is under obligation to produce all the relevant materials which are the basis for arriving at such a satisfaction.

iv) While examining the materials which form the basis for arriving at the subjective satisfaction by the Governor, the Court will not look into the sufficiency or correctness of the materials.

v) However, the Courts can examine whether the facts have been verified or not.

vi) The Court will not substitute its opinion for that of the President/Governor, but the materials in question have to be such as would induce a reasonable man to come to the conclusion in question.

vii) Even if some of the materials on which the action is taken are found to be irrelevant, the Court will not interfere, if there are some relevant materials to support the action.

In the light of the aforesaid general principles governing the aforesaid provision of Article 311(2) second proviso, clause (c), we may proceed to examine the individual petitions/writ appeals.

DECISION OF THE COURT:

[20] In W.P.(C) No. 706 of 2009, the main contentions of the petitioner are that he was never arrested in connection with any criminal case nor was he charged of involvement in any criminal case or subversive activities before the dismissal order was issued, and, the allegations against the petitioner are based entirely on the uncorroborated statement made by one M.I. Khan who himself was a self-proclaimed leader of a banned armed organisation. On the contrary because of his dedicated service rendered in counter insurgency he was duly awarded. Not only that, the petitioner and his family members had been victim of terror of the said organisation. Thus, it has been contended that there are no valid, actionable and credible material basis for invoking the extreme provision of Article 311 (2) second proviso, clause (c) of the Constitution, except the unverified allegations. In other words, this limb of argument of the petitioner is of non existence of legally valid materials but only unverified and uncorroborated and false evidences, which form the basis of the dismissal order. In this regard, it is to be noted that as already been held by the Hon'ble Supreme Court in **AK Kaul** (supra), based on the principle laid down in **S.R. Bommai** (supra) sufficiency, or otherwise or correctness of the material evidence which form the basis for arriving at the subjective satisfaction by the Governor will be beyond the purview of judicial review while examining the validity of an order issued by invoking the aforesaid provision of the Constitution.

[20.1] That apart, contrary to the submission made by the counsel for the petitioners/appellants, we have observed that the materials which form the basis for passing the impugned order are not entirely based on the statement of the said M.I. Khan but there are other materials which are contained in the police dossier prepared in respect of the petitioner which has been produced before this Court. On examination of the records

produced by the State respondents, we have noted that though the said M.I. Khan had implicated the petitioner in his statement made before the police authorities, there are other instances which have been meticulously catalogued in the police dossier showing subversive activities said to have been indulged by the petitioner, which clearly indicate that the incriminating materials against the petitioner are not solely based on the statement of the said M.I. Khan. The aforesaid dossier containing the incriminatory materials had been prepared by the Intelligence/C.I.D. Department of the State based on their own intelligence sources, which this Court cannot reject as concocted or fictitious outrightly. Accordingly, this Court does not accept the contention of the petitioner that the allegations against the petitioner are based only on the statement of M.I. Khan.

Therefore, this Court is not inclined to accept the contention of the petitioner that either there were no materials or such materials which form the basis of the dismissal order are unverified, whose correctness is doubtful, as this Court cannot examine the veracity of the materials.

The petitioner has neither alleged mala fide, nor do we find material indicating mala fide on the part of the respondent authorities.

[20.2] The petitioner has also alleged that though the dismissal order was issued earlier on 31.10.2009, the Committee of Advisors recommended for dismissal of the petitioner on 24.12.2009, which clearly indicates non application of mind on the part of the authorities. Mr. Raghumani, learned GA for the State respondents, however, has submitted that such an averment made in the affidavit-in-opposition was due to clerical mistake. He contended that in fact, the Governor had given the approval prior to the issued of the impugned order as can be verified from the records which have been produced. Accordingly, we examined the records and we have found that the though the dismissal order was issued on 31.10.2009, the Committee of Advisor had made the recommendation for dismissal of the petitioner from service on 17.11.2008

and the Chief Minister approved the same on 15.10.2009 and the Governor on 24.10.2009. Thereafter, the dismissal order was issued on 31.10.2009. The contention of Sri Raghumani, learned G.A. that it was a clerical error stands vindicated by records. Therefore, we do not accept this contention of the petitioner that there was non application of mind on the part of the respondents.

[20.3] The other contention of the petitioner is that the act of the Governor in merely approving the recommendation of the Committee of Advisors by recording the single word "approved" on the file, does not satisfy the requirement of law as the Governor is required to record in writing his own satisfaction that the Governor was personally satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry, relying of the decision of Gauhati High Court in **Lungsorei** (supra). This contention has been also raised by other petitioners/appellants, which this Court does not accept for the reasons as will be discussed later.

[20.4] Therefore, we hold that the writ petition, W.P.(C) No. 706 of 2009 is devoid of merit and is liable to be dismissed.

[21] In W.P.(C) No. 707 of 2009, similar plea has been taken of non-existence of material evidence to invoke this extreme provision for dismissal from service. It is also the contention of the petitioner that being attached to the Commando Unit of the Imphal West District Police, he was involved in a number of major counter insurgency operations resulting in apprehending a large number of armed extremists including those belonging to PULF. The petitioner further contends that not only that he himself was a victim of the extremist organisations. There was a bomb attack on his residence because of which he had suffered from serious mental disorder and depression for which he had to undertake medical treatment. It has been also contended that though the petitioner had been arrested in connection with FIR No. 238(10)2006, the sections invoked in the said FIR Case were Sections 307, 306, 427, 400 IPC which were all not

relatable to any underground or subversive activity. He, therefore, contends that had the petitioner been really involved in subversive activities as a member of any underground organisation, appropriate provision of the Unlawful Activities (Prevention) Act or Armed Acts could have invoked, as done in respect of extremist related cases, which however, was not done. It was also his contention that though he was arrested and detained under the NSA, he was released on the recommendation of the Advisory Board thus, clearly indicating that there were no materials to detain him under the NSA. The petitioner, therefore, submits that if there had been no materials to detain him under NSA which is a very stringent law, there could not be any material to invoke this provision of the Constitution for dismissing from service. His other grievance is that the allegations against him are entirely based on the uncorroborated and biased statement made by M.I. Khan of the "PULF" organisation and false allegations relating to extortions labelled against him.

[21.1] The petitioner has tried to discredit the allegations of extortion made against him from various persons who he claims are really his relatives, thus contending that it is incomprehensible that that he would himself extort money from his own relatives. As regards this contention, on examination of the dossier prepared by the C.I.D. Department against the petitioner, it has been shown that the extortion was ordered by the PULF but the petitioner had negotiated with these persons to lessen the amounts. The CID dossier contains in detail the activities and the manner in which the petitioner had carried out the extortions and delivered the extorted amounts to the concerned persons in the PULF. Thus, though the petitioner has vehemently denied this allegation of extortion as concocted and fabricated, this Court is unable to examine the correctness or otherwise of the same in view of the limited scope of judicial review as regards genuineness or credibility of the material evidence against him. The version of the respondents can not be

ruled out as utterly impossible and the version of the petitioner as the only possible scenario.

The law is very clear that this Court while examining the justiciability of the dismissal order issued under Article 311(2) second proviso clause (c), cannot examine the correctness or otherwise of the material evidences.

Hence, this Court is unable to accept these contentions of the petitioner.

[21.2] This Court holds the contention of the petitioner that closing of the departmental inquiry against him by reinstating him in service indicates that he was innocent of the charges, as incorrect, as it is specifically mentioned in the closure order dated 14.02.2008 passed by the disciplinary authority that the charge labelled against him of wilful absence is held proved, though the disciplinary authority took a lenient view. Further, admittedly, the petitioner was transferred to Ukhrul on 18.01.2007 but he went for joining his Ukhrul posting belatedly on 30.06.2007 when he was arrested in connection with FIR No. 238(10) 2006. The police dossier narrates many subversive activities alleged to have been indulged by the petitioner during the aforesaid period of absence, some of which have been also reflected in the affidavit-in-opposition filed by the State respondents. These allegations which are based on the intelligence reports as contained in the police dossier can not be brushed aside as incorrect as we can not examine the correctness or otherwise of the same for the reasons discussed above.

[21.3] This Court has also observed that the allegations against the petitioner are not based entirely on the statement said by M.I. Khan but also on the dossier prepared by the C.I.D. Department of Police containing various subversive activities said to have been indulged by the petitioner. Therefore, we do not accept the contention of the petitioner that there were no materials against the petitioner for invoking the said provision of the Constitution.

[21.4] Another contention which has been raised is that though the Committee of Advisors recommended dismissal of the petitioner from service by invoking the aforesaid provision of the Constitution on 10.10.2008, the authority did not act upon the same promptly but after a delay of more than a year, issued the dismissal order on 31.10.2009 which clearly indicates that there were no clinching and cogent materials for dismissing the petitioner. It is thus the petitioner's contention that had these allegations been true, there would not have been any hesitancy on the part of the authority to immediately take action. There was no reason for the authorities to wait for 1 (one) year if they were convinced that the petitioner was really involved in the subversive activities and the authorities have also not explained this delay in the affidavit-in-opposition.

As regards this contention, the Ld. Govt. Advocate has explained that there was no undue delay on the part of the State authorities as the matter was examined at various levels and further there is no such provision of law which debars any delayed action after the recommendation by the Committee of Advisors.

This Court has gone through the records and observed that though there was some delay on the part of an official in processing the file, there was no undue delay on the part of those important functionaries either the Chief Minister or the Governor who had approved the said decision promptly. Thus, there was no delay on the part of the competent authority in accepting or approving the recommendation when the same was put up to them for approval and also there was no delay in issuing of the impugned dismissal order after the same was approved by the competent authority. The petitioner cannot have any grievance by this delay in as much as no prejudice can be said to have been caused to the petitioner on account of this delay. The Office Memorandum or any other relevant rule or law does not stipulate that the dismissal order must be immediately issued after the Committee of Advisors makes the recommendation. Neither is there any provision that such a recommendation would lapse after a certain period. Therefore, we are of

the view that this delay in issuing the dismissal order after the same was recommended by the Committee of Advisors is not fatal as far as the case is concerned.

[21.5] The other contention raised by the petitioner in this case is about the alleged non application of mind by the Governor as regards the subjective satisfaction arrived at by the Governor to the effect that in the interest of the security of the State, it was not expedient to hold such an enquiry, contending that such opinion was not recorded by the Governor. The petitioner also contends that power of the Governor under Article 311 can not be delegated as has been done in the present case by delegating to the Deputy Secretary (Home). The Court does not accept these contentions as having no merit, as will be dealt later in this judgment.

[21.6] This Court also does not accept the contention of the petitioner that the allegations against the petitioner pertains merely to law and order problem and not security of the State. The records produced before this Court clearly indicate involvement of the petitioner in various anti-national activities of an underground armed organisation engaged in destabilising the nation, causing serious threat to the sovereignty, integrity and security of the State.

[21.7] Accordingly, we are of the view of that this writ petition also must fail.

[22] In W.P.(C) No. 476 of 2013, the case of the petitioner is in similar line, denying the correctness of the allegations of involvement in subversive activities. According to him, though he was arrested in connection with the hurling of hand grenade in the Chamber of Commerce Hospital, where his daughter was undergoing treatment, and also subsequently detained under the National Security Act, nothing has been proved against him. He submits that it is quite absurd to think that the petitioner would hurl bomb before a hospital where his daughter was being treated. As already discussed above, in view of the dossier prepared

by the C.I.D. detailing the various subversive activities, said to have been indulged by the petitioner, some of which are also reflected in the affidavit-in-opposition, this Court is of the view that there are sufficient incriminating materials against him and the Court is not inclined to examine the correctness or otherwise of these materials against him.

The petitioner has also raised similar objection that it was not sufficient for the Governor to merely approve in the file the recommendation for dismissal and it was incumbent upon the Governor to arrive at the subjective satisfaction personally based on the materials produced that in the interest of the security of the State, it is not expedient to hold a departmental inquiry against him, and record such satisfaction. It is submitted that merely approving or recording the single word "approved" will not meet the requirements of law. This contention, common to the others, does not find favour with this Court for reasons which will be elaborated later in this judgment.

[22.1] The petitioner also has raised another issue contending that the Office Memorandum which has the force of law has not been followed while considering and referring the matter by the Committee of Advisors and as such the impugned dismissal order is vitiated. This contention has been also raised in W.A. No. 3 of 2013. However, we do not agree with this contention for the reasons which we will be explained in the later part of this judgment.

[22.2] Accordingly, we hold that this writ petition is also devoid of merit and is liable to be dismissed.

W.A. No. 2 of 2013

[23] In W.A. No. 2 of 2013, the appellant also has raised the issue of non delegability of the power of the Governor contending that the impugned dismissal order is to be issued by the Governor which cannot be delegated to any other authority. This contention is without any legal basis as will be discussed in later part of this judgment.

[23.1] The appellant also has raised the issue of non-reliability of the materials taken into consideration by the authorities for issuing the impugned dismissal order. He has strenuously argued that the FIR filed against him was closed by the Court after the Investigating Officer submitted the report of insufficiency of evidence and on the statement made by the informant/complaint that he had no objection to the final report submitted by the I.O. which, therefore, clearly indicates that the allegations against the appellant were without any foundation and baseless and as such, these allegations cannot form at all the material basis to sustain the impugned dismissal order. Further, the Departmental Inquiry initiated against him was also similarly closed. As regards his detention under the NSA, he was subsequently released as the same was revoked on the recommendation of the Advisory Board. Therefore, it has been stated that the closure of the FIR, the Departmental Inquiry and his release from NSA clearly indicate that the charges against the petitioner are without any basis. Hence, it has been contended that all these allegations which were the basis for the FIR, Departmental Inquiry and the preventive detention under NSA cannot form the basis for passing the dismissal order. However, this contention of the petitioner cannot be accepted in view of the law that this Court while examining the justiciability of an order passed under Article 311(2), second proviso, clause(c) of the Constitution cannot embark upon the exercise to determine whether the material basis are correct or not nor regarding sufficiency of materials nor about irrelevancy, so long as some of the materials are relevant, as already discussed above, vide decisions in **Tulsiram Patel** (supra), **A.K. Kaul** (supra), **S.R. Bommai** (supra) etc.

[23.2] Therefore, we do not find any merit in this writ appeal.

W.A. No. 3 of 2013

[24] In writ appeal, WA No. 3 of 2013, similar pleas regarding veracity of the facts, non adherence to the procedures laid down in the Office Memorandum dated 16.08.2008 have been raised. The appellant

has also expressed serious doubts on the veracity of the materials on the basis of which the dismissal order was passed. It has been submitted that the appellant was involved in many counter insurgency operations, in one of which, the younger brother of the wife of one M.I. Khan a leader of the PULF was apprehended and the allegations against the appellant are based on the statement of the said M.I. Khan. Thus, it has been contended that relying on the statement of a person who has an axe to grind to dismiss the appellant is totally unreasonable and unacceptable. It has been further contended that the appellant had been promoted to higher posts under the quota reserved for those who had excelled in service because of his enormous contribution in counter insurgency operations. This Court has found on the basis of the record produced before this Court that the foundation for passing the impugned order is not only the statement made by M.I.Khan but also the police dossier prepared by the CID, Manipur Police which we do not find any reason to doubt, correctness of which we also can not examine, in view of the law laid down, as already discussed above.

[24.1] As regards the contention that the Office Memorandum dated 16.08.2008 had not been properly followed, on examination of the records we have found that there has been substantial compliance with the procedure laid down and all the important functionaries have been duly consulted/involved. Therefore, we do not accept this contention also.

[24.2] Therefore, we find no merit in the contentions of the appellant, hence, we are of the view that this writ appeal must also fail.

Common Pleas

[25] We have found in all these writ petitions and writ appeals the common plea taken is that the material basis for arriving at the subjective satisfaction by the Governor that it is not expedient to hold the enquiry in the interest of the security of the State are either false or based on uncorroborated or unsubstantiated allegations/informations. This Court has already discussed the relevant law in this regard. It is now well-settled

position of law that while examining the validity of a dismissal order issued on the Article 311(2) second proviso clause(c), this Court cannot look into either the sufficiency or correctness of the materials and also about the relevancy, as long as some of the materials are found to be relevant, which form the basis for arriving at the subjective satisfaction by the Governor, as held in **Tulsiram Patel** (supra), **S.R. Bommai** (supra), **A.K. Kaul** (supra). In view of the above, this Court has declined to examine the veracity, genuineness or credibility or the relevancy of the incriminating information/materials relied against them.

[25.1] We have noted that in respect of writ petitions, W.P.(C) Nos. 706 and 707 of 2009 as well as writ appeals, W.A. Nos. 2 and 3 of 2013, it is not only the statement of M.I. Khan which was relied upon but also the police dossier prepared by the CID Manipur Police. In the case of W.P.(C) No. 476 of 2013, the allegations were contained in the police dossier. We have noted that since the material basis for issuing the impugned dismissal orders were contained in police dossiers which have been prepared by the police from their intelligence and other sources, the information contained in the police dossier can be considered to have been verified at the appropriate level at the time of preparation and compilation.

We have also noted that based on certain intelligence reports, some of the police personnel including the petitioners/appellants were already kept under surveillance before actions were initiated against them and detail dossiers had been accordingly, prepared by the State CID on the basis of intelligence inputs and other sources.

[25.2] This Court is of the view that it may not be necessary also to deal with each and every denial of facts in these petitions/appeals because of the general principle of law that this Court can not embark upon to examine the veracity or correctness of the material forming the basis of the dismissal order.

We have accordingly rejected the contention of the petitioners/appellants in all these petitions/appeals, that the materials

which form the basis for arriving at the subjective satisfaction of the Governor as discussed above, are false, concocted or untrue.

[26] We are also not impressed by the other legal contentions raised by the petitioners/appellants. It was vehemently argued by the petitioners/appellants that the Governor has to be personally satisfied about the subjective satisfaction of the inexpediency of holding the inquiry in the interest of the security of the State. This contention cannot be accepted in view of the law laid down in **Tulsiram Patel**'s case (supra), as discussed above, that satisfaction is not of the Governor himself but of the Council of Ministers on whose aid and advice the Governor has to exercise the aforesaid power.

[26.1] Since, the Governor has to act on the aid and advice of the Council of Ministers, in these cases we have to examine whether there was adequate materials before the Council of Member/Minister in charge for arriving at the subjective satisfaction that in the interest of the security of the State that it was not expedient to hold the enquiry. On examination of the records, we have found that there were sufficient materials before the Committee of Advisors which recommended dismissal of the petitioners/appellants under the circumstances. The said recommendation of the Committee of Advisors was duly put up with the relevant materials/records before the Chief Minister who was also in charge of Home Department, who on being satisfied with the recommendation and materials on record, approved the recommendation for dismissal without holding enquiry. Thus, we have noted that the competent authority, in this case, the Chief Minister, based on the materials and recommendation placed before him was satisfied that it was in the interest of the security of the State that it was not expedient to hold the inquiry and accordingly, in turn recommended the same to the Governor, who also approved the same. The records indicate that all the relevant materials including the proceeding and recommendation of the Committee of Advisor and approval by the Chief Minister were placed before the Governor before he gave his approval. Under our Constitutional law, the satisfaction of the

Council of Ministers is the satisfaction of the Governor, unless the Constitution otherwise requires as has been held in **S.R. Bommai** (supra). There was proper application of mind by the Chief Minister relating to the subjective satisfaction as required under the aforesaid provision of the Constitution. The Governor had acted on the advice of the Chief Minister which was based on relevant materials. Accordingly, we are of the view that the requirements of conditions contemplated under Article 311(2) second proviso, clause (c) have been satisfied.

[27] The other contention which has been pressed hard by the writ petitioners/writ appellants is that the Governor himself has to record in writing about the aforesaid subjective satisfaction in the file and relying on the decision of the Hon'ble Gauhati High Court in **Lungsorei** (supra). It has been contended that merely approving by putting his signature or recording the word "approved" on the file does not meet the requirement of law as regards the aforesaid subjective satisfaction. We do not agree with this contention. Though the Hon'ble Gauhati High Court in **Lungsorei** (supra) was dealing with a dismissal order under Article 311(2) second proviso clause (c), the Hon'ble High Court on perusal of the record in the said case found that the Chief Secretary of the State considering the gross negligence in duty on the part of police personnel concerned, took the view that it was necessary that strict disciplinary action should be taken against the delinquent personnel and their services may be dismissed without any departmental inquiry in terms of Article 311(2) second proviso clause(c) of the Constitution which was approved by the Governor of Manipur with a single word "approved". The Hon'ble Gauhati High Court found that there was no opinion expressed by any authority that it was not expedient to hold departmental inquiry in the interest of the security of the State and accordingly, the Hon'ble Court held that the impugned dismissal order was vitiated as being based on wholly extraneous or irrelevant grounds and there was no material on record for invoking the provision of Article 311(2) second proviso clause(c) of the Constitution of India. Accordingly, in the facts and circumstances of the case, the Hon'ble

Gauhati High Court interfered with the dismissal orders. However, the situation is different in the present cases. In the present cases, the records clearly reveal the existence of the subjective satisfaction by the competent authority, i.e., the Chief Minister based on the materials and recommendation of the Committee of Advisors that it is not expedient to hold the departmental inquiry in the interest of the security of the State, which recommendation and opinion was also endorsed and approved by the Governor. This Court is of the view that as the speaking recommendation of the Committee of Advisors based on the relevant materials was approved by the competent authority viz., the Chief Minister as well as the Governor, there was no need for either the Chief Minister or the Governor to separately restate again in so many words their opinion about the subjective satisfaction that it was not expedient to hold the inquiry in the interest of the security of the State. In any event, as already discussed above, it is not the personal satisfaction of the Governor which is material but of the Council of Ministers.

If any proposal is put up with reasons for approval, and the proposal is approved by the appropriate authority, even if in a single word, it would be deemed that the reasons given for approval are also approved along with the proposed action, unless specifically expressed otherwise. Therefore, in the present cases, as the Chief Minister and the Governor had approved the proposal for dismissal by a single word, and as the proposal was supported by reasons and relevant materials it would be deemed that the reasons for proposing dismissal are also approved.

Therefore, we reject this contention raised by the petitioners/appellants.

[28] We also do not find any force in the contention raised by the petitioners/writ appellants that the power of the Governor contemplated under Article 311(2) second proviso, clause(c) had been delegated to the Deputy Secretary (Home) while issuing the dismissal orders. As already discussed above, the power of the Governor under the aforesaid provision of the Constitution is to be exercised with the aid and advice of the Council

of Ministers except where the Governor is required under the Constitution to exercise his function under his discretion. Further, the Governor does so by making rules for convenient transaction of business as provided under Article 166(3) of the Constitution by allocating works among the Ministers. In terms of Article 166(3), the Governor of Manipur framed the Rules of Business in respect of the State of Manipur on 21.01.1972. Rules 10 and 11 thereof which are relevant, are reproduced herein below:

> "**10.** All orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made or executed in the name of the Governor and in such manner as he may direct or authorise under Article 299 of the Constitution.
>
> **11.** Every order or the instrument of the Government shall be signed either by a Secretary, a Special Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary and an Under Secretary to the Government of the State or such other officers as may be specially empowered in that behalf and such signatures shall be deemed to be the proper authentication of such orders or instruments."

Accordingly, under Rules 10 and 11, a Deputy Secretary of the Home Department is authorized to issue the dismissal orders in the name of the Governor. Therefore, when the impugned dismissal orders were issued by the Deputy Secretary, Home Department in the name of the Governor, it is not a case of delegation of authority by the Governor. As per the Rules of Business, the order issued by the Deputy Secretary is deemed to be the order issued by the Governor.

[29] The other contention relates to allegation that the procedures laid down in the Office Memorandum dated 16.08.2008 issued by the Governor of Manipur was not adhered to and since the aforesaid Office Memorandum has the force of law, action taken in derogation of the procedures in the aforesaid Office Memorandum would be vitiated. In this regard, we have examined the records of the case. We have found that all important functionaries mentioned in the Office Memorandum have been involved in the process. The incriminating materials collected by the Director General of Police were referred to the Chief Secretary which in turn were considered by the Committee of

Advisors constituted by the Department of Personnel, which after examining the materials, formed the opinion that it was not necessary to hold any departmental inquiry against the petitioners/appellants in the interest of the security of the State and these materials were sufficient to warrant dismissal from their services. Thereafter, the matter was put up before the Chief Minister for approval who after considering the materials and recommendation of the Committee of Advisors approved the same and he in turn put up the same to the Governor for approval. Thereafter, on being approved by the Governor, the impugned dismissal orders were issued. Thus, we find that there was substantial compliance of the procedures laid down in the Office Memorandum. We hold that even if the procedures laid down in the Office Memorandum have not been scrupulously followed, but if the same had been substantially followed, it would have no effect on the validity of the action taken. The aforesaid Office Memorandum had been framed to ensure that there is proper application of mind by the authorities concerned before invoking such a stringent provision of law.

We have also noted, as also mentioned by the Ld. Counsel for the petitioners/appellants that there is one provision under the said Office Memorandum which provides for the Committee of Advisors to decide as to whether the allegations are to be disclosed to the suspect and to give him an opportunity to furnish an explanation if the Committee of Advisors so deem it necessary. Thus, in the event the Committee of Advisors decides to disclose the materials and give opportunity to the person concerned to give his explanation, if the said opportunity had not been given inspite of the recommendation by the Committee, certainly it would have caused prejudice to the person. In such an event, non-disclosure of materials and non giving of opportunity in spite of the opinion of the Committee of Advisors can be said to be prejudicial to the interest of the person concerned. In such a situation, any subsequential action taken to dismiss a person by ignoring such opinion of the Committee of Advisors would be vitiated. However, in the present case it is not the situation where the Committee of Advisors had

considered it necessary to disclose the materials against the petitioners/appellants and to call for explanation. The Committee on the basis of the materials was of the view that the petitioners/appellants had indulged in subversive activities secretly having a bearing on the security of the State by promoting the militant activities of the armed organizations which were prejudicial to the sovereignty, integrity and security of the State and the Committee also was of the view that it was not considered advisable to disclose the allegations against them and to call their explanations. Therefore, we are of the view that there has been no deviation from the provisions of the Office Memorandum by the important functionaries involved in the process. We are of the opinion that a small deviation here and there relating to any of the provisions of the said Office Memorandum cannot be fatal so long as the important aspects and exercises touching upon the requirements of Article 311(2) second proviso clause (c) are complied with, which we have found to have been done in the present cases. The Court has to take a holistic view of the process and not a pedantic view by finding fault on little aberrations in the process which do not have any direct bearing on the decision arrived at by the important functionaries mentioned in the Office Memorandum.

[30] As regards this contention of the petitioners/appellants that the Office Memorandum dt. 16.8.2008 is binding upon the respondents, it may be noted that generally only such administrative order or instruction which is intended to confer certain rights or benefits will be treated as binding and enforceable. The Hon'ble Supreme Court in ***Union of India v. K.P. Joseph, (1973) 1 SCC 194*** held that,

> **"9.** Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma* v. *State of Rajasthan*[1] that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue

instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.

10. In *Union of India* v. *Indo-Afghan Agencies Ltd*.[2] this Court, in considering the nature of the Import Trade Policy said:

"Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities."

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of *audi alteram partem* into this area....."

1. (1968) 1 SCR 111 : AIR 19867 SC 1910
2. (1968)2 SCR 366 : AIR 1968 SC 718

It may be apposite also to refer to the decision of the Hon'ble Supreme Court in ***Narendra Kumar Maheshwari v. Union of India, 1990 Supp SCC 440***, where it was observed that,

"107. We would also like to refer to one more aspect of the enforceability of the guidelines by persons in the position of the petitioners in these cases. Guidelines are issued by governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits, largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the *Ramana Shetty case*[1]), the guidelines may prescribe certain standards or norms for the grant of certain benefits and a relaxation of, or departure from, the norms may affect persons, not directly but indirectly, in the sense that though they did not seek the benefit or privilege as they were not eligible for it on the basis of the announced norms, they might also have entered the fray had the relaxed guidelines been made known. In other words, they would have been potential competitors in case any relaxation or departure were to be made. In a case of the present type, however, the guidelines operate in a totally different field. The guidelines do not affect or regulate the right of any person other than the company applying for consent. The manner of application of these guidelines, whether strict or lax, does not either directly or indirectly, affect the rights or potential rights of any others or deprive them, directly or indirectly, of any advantages or benefits to which they

were or would have been entitled. In this context, there is only a very limited scope for judicial review on the ground that the guidelines have not been followed or have been deviated from. Any member of the public can perhaps claim that such of the guidelines as impose controls intended to safeguard the interests of members of the public investing in such public issues should be strictly enforced and not departed from; departure there from will take away the protection provided to them. The scope for such challenge will necessarily be very narrow and restricted and will depend to a considerable extent on the nature and extent of the deviation. For instance, if debentures were issued which provide no security at all or if the debt-equity ratio is 6000: 1 (as alleged) as against the permissible 2:1 (or thereabouts) a court may be persuaded to interfere. A court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect. Per contra, the court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.

1. (1979) 3 SCCD 489

The said Office Memorandum neither has created any right nor imposes any duties, but merely lays down a fair procedure to be adopted while invoking the provision of Art. 311 (2) 2nd Proviso, Clause (c), of the Constitution. To that extent, it confers no justiciable rights to the petitioners/appellants. We have also noted that there has been substantial compliance with the Office Memorandum dated 16.8.2008. Therefore, we do not find any reason to interfere with the dismissal orders on the ground of alleged violation of the Office Memorandum dated 16.7.2008.

For the same reasons, we are of the view that the decisions cited by Sri Kh.Tarunkumar, Ld. Counsel for the petitioner in W.P.(C) No. 476 of 2013 and Writ Appellant in W.A. No. 3 of 2013, of the Hon'ble Supreme Court in **Gulf Goans Hotels Company Ltd. &**

Anr. Vs. Union of India & Ors., (2014) 10 SCC 673; Uttar Pradesh Vs. Chandra Mohan Nigam and Ors, (1999) 4 SCC 345; Kartar Singh vs. State of Punjab, (1994) 3 SCC 569; G. Sadanandan vs. State of Kerala, AIR 1966 SC 1925 and of the Gauhati High Court reported in **2016 (2) GLT (MN) 203** are not applicable in the present cases.

[31] We are also of the view that the allegations and materials relied upon by the authorities are serious and grave enough to warrant dismissal from service of the writ petitioners/writ appellants.

We have also noted that there is no element of mala-fide in the actions taken by the respondent authorities so as to warrant any interference by this Court.

[32] In view of the above conclusions arrived at by us, we are of the opinion that it may not be necessary to dwell upon other contentions raised.

Verdict :

[33] Accordingly, for the reasons discussed above, we hold that the writ petitions/writ appeals are devoid of merit and accordingly, W.P.(C) No. 706 of 2009, W.P.(C) No. 707 of 2009, W.P.(C) No. 476 of 2013, W.A. No. 2 of 2013 and W.A. No. 3 of 2013 are dismissed.

JUDGE **JUDGE**

FR/NFR

Chongnunkim/
Opendro/
Sushsil (rt)