

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No. 2079 of 2026 a/w
CWP Nos. 1601 and 1602 of
2026**

Reserved on: 16.06.2026

Decided on: 18.06.2026

1. CWP No. 2079 of 2026

Neeraj Kumar

...Petitioner

-Versus-

State of Himachal Pradesh and others

....Respondents

2. CWP No. 1601 of 2026

Rajat Chandel

....Petitioner

-Versus-

State of Himachal Pradesh and others

....Respondents

3. CWP No. 1602 of 2026

Rahul Verma

....Petitioner

-Versus-

State of Himachal Pradesh and others

....Respondents

Coram:

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes.

1. CWP No. 2079 of 2026

For the petitioner:

Mr. K.D. Shreedhar, Senior Advocate with
Ms. Sneha Bhimta, Advocate.

For the respondents:

Mr. Anup Rattan, Advocate General, with
Rahul Thakur, Deputy Advocate General
& Mr. Rajat Chauhan, Assistant Advocate
General, for the respondent-State.

2. CWP No. 1601 of 2026

For the petitioner: Mr. Rajiv Jiwan, Senior Advocate with Mr. Yug Singhal, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with Mr. Rahul Thakur, Deputy Advocate General and Mr. Rajat Chauhan, Assistant Advocate General, for the respondent-State.

3. CWP No. 1602 of 2026

For the petitioner: Mr. Rajiv Jiwan, Senior Advocate with Mr. Yug Singhal, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with Mr. Rahul Thakur, Deputy Advocate General and Mr. Rajat Chauhan, Assistant Advocate General, for the respondent-State.

Ajay Mohan Goel, J.:

CWP No. 2079 of 2026 a/w CWP Nos. 1601 and 1602 of 2026

As common issues of facts and law are involved in these writ petitions and as arguments were also heard jointly in all the petitions, they are being disposed of vide common judgment.

2. In brief, I will deal with the facts of each case independently before reverting to the legal issues involved in these petitions.

CWP No. 2079 of 2026

3. Petitioner-Neeraj Kumar was appointed as a Constable in the month of April, 2001. Thereafter, he was promoted as Head Constable in the month of March, 2009. In the year 2010, he was appointed as a Sub-Inspector, upon qualifying the competitive examination through Service Selection Board. Thereafter, he was promoted as an Inspector in the month of March, 2016. FIR No. 04 of 2021 was registered against him on 21.12.2021 at Police Station, Hamirpur, under Section 7 of the Prevention of Corruption Act, 1988. Two more FIRs.,i.e., FIR No. 168 of 2021, under Section 307 of IPC and FIR No. 170 of 2021, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were also registered against the petitioner. In terms of the averments made in the writ petition, all these FIRs. are pending consideration at the stage of charge before the learned Trial Court. The petitioner was suspended from service on 23.12.2021. On 26.12.2021, a regular departmental inquiry was ordered against him by the Superintendent of Police, Hamirpur, under Rule-16.24 of the Punjab Police Rules, 1934, as applicable to the State of Himachal Pradesh. A Summary Charge-sheet was issued against the petitioner on 28.12.2021. According to the petitioner, regular departmental inquiry was based on the

abovementioned three FIRs. and additionally, on one DD No. 50, dated 21st December, 2021 of Police Station, Nadaun, in which, it was recorded that the petitioner was found to have left the duty station without any prior permission of the competent authority.

4. To cut the controversy short, in the disciplinary proceedings, on 21.04.2023, the Disciplinary Authority imposed minor penalty of forfeiture of two years approved service for increment temporarily upon the petitioner.

5. It is further the contention of the petitioner that in the meanwhile, he was reinstated in service since 18.11.2022 and since then, he was performing his duties diligently. The grievance of the petitioner is that after three years as from imposition of minor penalty, the Director General of Police, vide impugned order dated 12.01.2026, while invoking Article 311(2)(b) of the Constitution of India and Government of India OM dated 25.11.2022, suo motu revised the order of penalty of the Disciplinary Authority and dismissed the petitioner from service, in terms of the provisions of Sections 63 and 87 of the Himachal Pradesh Police Act, 2007, without affording any opportunity of hearing to the petitioner.

CWP No. 1601 of 2026

6. Case of petitioner Rajat Chandel is that he was appointed as a Consable in the year 2013. On 14.08.2024, an FIR,

i.e., FIR No. 107, dated 14.08.2024, under Sections 21,29 & 27(A) of the Narcotic Drugs and Psychotropic Substances Act and Section 111 of the Bharatiya Nyay Sanhita was registered at Police Station Sadar, Shimla, Himachal Pradesh. The petitioner was one of the accused therein. On 08.07.2025, a Charge-sheet was served upon the petitioner by the Deputy Superintendent of Police, Cyber Crime, Shimla. On 18.08.2025, he was arrested in connection with the abovementioned FIR. He was placed under suspension by the competent authority on 19.08.2025. Vide office order dated 30.08.2025, a regular departmental inquiry was initiated against the petitioner. The grievance of the petitioner is that in terms of impugned order dated 12.01.2026, the Director General of Police, while invoking the provisions of Article 311(2)(b) of the Constitution of India read with Sections 63 and 87 of the Himachal Pradesh Police Act, 2007, dismissed him from service, without affording any opportunity of hearing to him and without awaiting the outcome of the departmental inquiry or the trial.

CWP No. 1602 of 2026

7. The case of the petitioner Rahul Verma is that he was appointed as a Constable on 01.10.2023. An FIR, i.e., FIR No. 107, dated 14.08.2024, under Sections 21, 29 & 27(A) of the Narcotic Drugs and Psychotropic Substances Act and Section 111 of the

Bharatiya Nyay Sanhita was registered against him at Police Station Sadar, Shimla. The petitioner was placed under suspension on 20.11.2025 and a regular departmental inquiry was initiated against him. He was arrested on 27.11.2025. The grievance of the petitioner is that in terms of impugned order dated 12.01.2026, the Director General of Police, while invoking the provisions of Article 311(2)(b) of the Constitution of India read with Sections 63 and 87 of the Himachal Pradesh Police Act, 2007, dismissed him from service, without affording any opportunity of hearing to him and without awaiting the outcome of departmental inquiry or the trial.

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8. Learned Senior Counsel appearing for the petitioner-Neeraj Kumar argued that the impugned order passed by the Director General of Police was not sustainable in the eyes of law. Learned Senior Counsel submitted that once departmental inquiry stood initiated against the petitioner, in which, a minor penalty was imposed upon him, there was no occasion for the Director General of Police, to revise the order, in the mode and manner, in which the same has been done by dismissing the petitioner from service, by invoking the provisions under Article 311(2)(b) of the Constitution of India. Learned Senior Counsel submitted that the power under Article 311 (2)(b) of the Constitution of India has to be, otherwise also,

invoked by the Disciplinary Authority and herein, the Director General of Police was not the Disciplinary Authority. He submitted that in the present case, the Director General of Police, though was an Authority superior to the Disciplinary Authority, but he was not the Disciplinary Authority. He argued that as a result of the Director General of Police passing the impugned order, the right of appeal and revision of the petitioner has been jeopardized. Learned Senior Counsel further submitted that otherwise also the impugned order is bad in law, as it violates the law declared by the Hon'ble Supreme Court of India in Union of India and another Vs. Tulsi Ram Patel, (1985) 3 Supreme Court Cases 398 and other judgments, including the latest judgment of the Hon'ble Supreme Court in Manohar Lal Vs. Commissioner of Police and others, 2025 SCC Online SC 363. Learned Senior Counsel argued that the impugned order has been passed by the Director General of Police without holding any inquiry, thus, the principles of natural justice were flouted with impunity in the case. He submitted that in the facts and circumstances of the case, there was no occasion for the Authority to have had invoked the provisions of Article 311 (2)(b) of the Constitution of India, because the circumstances were not such that they posed such a grave danger to the life and liberty of anyone or to the State property so as to do away with the normal course of holding an inquiry. Learned Senior

Counsel submitted that in the present case, the petitioner was serving the Department after being reinstated in the year 2022 and since then, there was no complaint against him till the passing of the impugned order. He submitted that in these circumstances, passing of the impugned order was totally unjustified. Learned Senior Counsel by taking the Court through the impugned order also argued that the contents thereof demonstrate that the same was passed with a premediated mind, rather than due application of mind. He submitted that the language used in the impugned order was demonstrative of the fact that herein the Authority had firstly decided to do away with the services of the petitioner and the order was nothing but a “mean” adopted by the Authority to achieve the ‘end’ which already stood decided by the earlier Authority. He submitted that the passing of the impugned order was nothing but an act of colourable exercise of power, which violates the Constitutional mandate and spirit, as also Punjab Police Act, as applicable to the State of Himachal Pradesh, relating to holding of inquiries. Learned Senior Counsel also submitted that in the present case, the petitioner was firstly made to face the inquiry, in which, he was punished and subsequently, on the same set of events, he was punished again this time, by terminating his services, without associating him with the process undertaken by the Authority. Learned Senior Counsel thus

submitted that as the impugned order was not sustainable in the eyes of law,, the same be quashed and set aside.

9. Learned Senior Counsel appearing for the other two petitioners adopted the arguments of Shri K.D. Shreedhar, learned Senior Counsel. In addition, he submitted that in the other two cases, the departmental inquiry was still pending and, therefore, in these circumstances, there was no occasion for the Director General of Police to have had passed the impugned orders, which demonstrated that the same were passed with premediated mind. Leaned Senior Counsel submitted that the provisions of Article 311(2)(b) of the Constitution of India are to be used sparingly, in rare cases. He submitted that this extremely important aspect of the matter was ignored by the Authority concerned while passing the impugned orders.

10. On the other hand, learned Advocate General argued that there is no infirmity in the orders passed by the Director General of Police, in terms whereof, the services of the petitioners stand terminated. Learned Advocate General argued that due process was followed by the Authority while passing the impugned orders and the parameters laid down under Article 311(2)(b) as also the relevant provisions of the Punjab Police Act, as applicable to the State of Himachal Pradesh were followed in letter and spirit by the Authority.

Learned Advocate General argued that herein, it is a case wherein three Police Officials were found involved in offences punishable under the NDPS Act. He submitted that if protectors of law themselves take the law in their hands by involving themselves in the activities which are punishable under the NDPS Act, then, it would be very difficult for the Government to move towards its goal of making the State as a drug free State. He submitted that the Director General of Police passed the impugned orders so that it sets an example to all concerned that the Police Department was serious about making the State a drug free State. Learned Advocate General also relied upon the judgment of the Hon'ble Supreme Court in Union of India and another Vs. Tulsi Ram Patel, (1985) 3 Supreme Court Cases 398. Learned Advocate General argued that the Policy of the Government was to ensure that no employee involved in drug trafficking went scot free and more so, of the Police Department. Learned Advocate General argued that the orders passed by the Director General of Police were not without jurisdiction and he was competent to pass such orders under the provisions of the Punjab Police Rules, as applicable to the State of Himachal Pradesh. Learned Advocate General also argued that there was no violation of the provisions of Article 311 (2)(b), because it was in fact this Clause of Article 311 (2) of the Constitution of India, which conferred power upon the Director

General of Police to take hard and harsh steps to meet the ends of justice. Learned Advocate General also argued that the earlier departmental inquiry was not held on the allegations of NDPS Act and, therefore, there is no merit in the contention of learned Senior Counsel appearing for petitioner Neeraj Kumar that it was a case of double jeopardy. By referring to the order earlier passed by the Disciplinary Authority, he submitted that the said order was passed on totally different charges and the allegation of NDPS was not the foundation of the earlier order passed against the petitioners qua imposition of minor penalty. Learned Advocate General also submitted that as tough measures are required to be taken to deal with the drug peddlers, therefore, least interference should be there in such like matters by the Court.

11. I have heard learned Senior Counsel for the petitioners as also learned Advocate General and have also carefully gone through the pleadings and the documents appended therewith, including the impugned orders.

12. The moot question involved in these writ petitions is that as to whether in the peculiar facts and circumstances of the case, the termination of the services of the petitioners without holding any inquiry is sustainable in the eyes of law or not.

13. It is not in dispute that there are FIRs. registered against the petitioners for commission of offences under the NDPS Act. It is also not in dispute that all the petitioners were officer/officials from the Police Department. It is clarified at this stage itself that minor punishment imposed on Neeraj Kumar was not for commission of alleged offences under the NDPS Act.

14. This Court is of the considered view that in view of drug menace, harsh measures are required to be taken by one and all to fight this menace and there is no dispute on this issue, as argued by learned Advocate General that strict measures indeed are required to be taken to deal with the drug menace and if any officer or official of the State Government is found involved in this drug menace, then, harsh measures are required to be taken in such like cases, But then, this Court would like to put a Caveat and the same is that come what may, due process of law has to be followed in every case, including the cases under the NDPS Act.

15. Before proceeding further, I will first of all address the contentions of learned Senior Counsel for the petitioners that the impugned orders passed by the Director General of Police were not sustainable, as under the provisions of Article 311 (2)(b) of the Constitution of India, the Authority competent to pass the order was the Disciplinary Authority only and as the Director General of Police

was not the Disciplinary Authority, therefore, he could not have passed the impugned orders.

16. The petitioners herein are the employees of the Police Department. They are governed by the provisions of the Punjab Police Rules, 1934, as are applicable to the State of Himachal Pradesh. Departmental proceedings are envisaged in Rule 16.24 of the said Rules.

17. Chapter-16 of the Punjab Police Rules, 1934, as is applicable to the State of Himachal Pradesh provides for 'punishments'. Rule-16.1 of the said Rules provides for 'Authorized punishments'. Sub-Rule of Rule-16.1 provides that no Police Officer shall be departmentally punished otherwise than as provided in the said Rules and Sub-Rule (2) thereof provides that the departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher rank. The Rule provides as under:-

"16.1 Authorized punishment.-(1) No police officer shall be departmentally punished otherwise than as provided in these rules. (2) The departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the

officers named below each heading in each case, or by any officer of higher rank-

1	2	3	4	5	6
Sr. No.	Departmental punishment	Inspectors	Sergeants, Inspectors Assistant Sub- and Sub-Inspectors	Head Constables	Constables
1.	Dismissal	Deputy Inspectors-General, Assistant Inspector-General, Government Railway Police, the Assistant Inspector-General, Provincial Additional Police, designated as Commandant, Provincial Additional Police, and the Assistant Inspector-General of Police (Traffic)	Superintendents of Police Commandants of Punjab Armed Police and Deputy Superintendent (Administrative), Government Railway Police.	Superintendent of Police; Deputy Superintendent (Administrative). Government Railway Police; Deputy Superintendents incharge of Railway Police Sub-Divisions; Senior Assistant Superintendent of Police, Lahore; Officers-in-charge of Police Constables Training Centres. Deputy Superintendent of Police, Lahaul and Spiti.	Superintendents of Police, Deputy Superintendent (Administrative), Government Railway Police; Deputy Superintendents in charge of Railway Police Sub-Divisions; Senior Assistant Superintendent of Police, Lahore; Officer-in-charge of Recruits Training Centres. Deputy Superintendent of Police, Lahaul and Spiti.

18. The petitioners before this Court are Inspector and Constables, respectively. The punishment of dismissal can be imposed upon an Inspector, by a Deputy Inspectors- General or any Officer of higher rank and similarly, the punishment of dismissal can be imposed upon a Constable by the Superintendent of Police or by any officer of higher rank. Herein, the punishment of dismissal has been imposed upon the petitioners by the Director General of Police, who obviously is an Officer of higher rank than the one envisaged in Rule 16.1.

19. Therefore, in light of the fact that the Punjab Police Rules do empower the Director General of Police to impose the punishment of dismissal on the petitioners, being an Officer of higher

rank than the Officers shown in Headings 3 to 6 (supra), this Court finds no merit in the contention of learned Senior Counsel for the petitioners that the Director General of Police could not have had passed the impugned orders.

20. Now, this Court would be referring to the next important aspect of the matter as to whether in the peculiar facts and circumstances of these three cases, the Director General of Police was justified in dismissing the petitioners from service by invoking the provisions of Article 311 (2)(b) of the Constitutions of India by doing away with the inquiry.

21. Article 311 of the Constitution of India deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. The provisions of this Article provides as under:-

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

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

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the

charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

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

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

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

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

22. In terms of Article 311 (2), no person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. However, proviso to Article 311 (2) provides that said Clause shall not apply in following circumstances: -

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

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

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

23. In the present case, Sub-Clause (a) and Sub-Clause (c) have no applicability. The Director General of Police has exercised the power conferred under Article 311 (2)(b) of the Constitution of India, which provides that the Authority empowered to dismiss or remove a person or reduce him in rank, if it is satisfied that for same reasons, to be recorded by that Authority in writing, it is not

reasonably practicable to hold such inquiry, then in such circumstances, it can do away with holding of an inquiry.

24. Issue qua the exercise of power conferred under Article 311 (2) of the Constitution of India came up for consideration before the Hon'ble Supreme Court of India in Union of India and another Vs. Tulsi Ram Patel, (1985) 3 Supreme Court Cases 398, in which, Hon'ble Supreme Court, by majority, qua applicability of Article 311(2) of the Constitution of India held as under:-

“101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in [J.Mohapatra & Co. and another v. State of Orissa and another](#) [1985] 1 S.C.R. 322,334-5. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative

process or where the need for promptitude or the urgency of taking action so demands, as pointed out in [Maneka Gandhi](#)'s case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision or the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of [Article 311](#) is expressly excluded by the opening words of the second proviso and particularly its key-words this clause shall not apply. As pointed out above, clause (2) of [Article 311](#) embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a Constitutional provision, namely, the second proviso to clause (2) of [Article 311](#), there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the Constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to [Article 14](#). This is, however, the only scope which [Article 14](#) can have in relation to the second proviso. but to hold that once the second proviso is properly applied and clause (2) of [Article 311](#) excluded, [Article 14](#) will step in to take the place of

clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution - makers who inserted it in [Article 311\(2\)](#) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

.....

130. *The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of [Article 311](#). What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context*

of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what

is happening. It is because the disciplinary authority is the best judge of this that clause(3) of [Article 311](#) makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by [Article 311\(3\)](#) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of [Arjun Chaubey v. Union of India and others](#), [1984] 3 S.C.R. 302, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further

explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

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

132. *It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the*

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

133. *The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by [Article 311\(2\)](#). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing*

with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. *It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.*

135. *It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government*

servant to enable him to challenge the validity of that reasons in a departmental appeal or before a court of law and the failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of [Article 311](#) makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under [Article 226](#) or, in a fit case, this Court under [Article 32](#). If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not

produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

136. *It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.*

137. *A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provisions of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules,*

he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and the approaches either the High Court under [Article 226](#) or this Court under [Article 32](#), the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of [Article 311](#) to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding

upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

25. Recently, again the Hon'ble Supreme Court of India in *Manohar Lal Vs. Commissioner of Police and others*, 2026 SCC

Online SC 363, qua applicability of Clause (b) of the second proviso to Article 311 (2) has been pleased to hold as under:-

“16. It is trite law that the decision of the appointing authority on the issue of recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable may be subject to judicial review under [Article 226](#) by High Court or under [Article 32](#) by the Supreme Court. This Court in the Constitution Bench judgment rendered in the case of [Tulsiram Patel](#) (Supra) reiterated the legal positions and explained the same. The High Court in the impugned judgment has relied upon paragraph 101 of [the said judgment](#). Learned senior counsel for the appellant contended before us that subsequent paragraphs, in particular, paragraphs 130, 133 and 138, which enunciates the law while interpreting [Article 311\(2\)](#) of the Constitution of India, have not been considered. Therefore, for ready reference, we reproduce all the aforesaid paragraphs as thus:

“101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo iudex in causa sua* rule as also to the *audi alteram partem* rule. The *nemo iudex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in [J. Mohapatra & Co. v. State of Orissa](#) [(1984) 4 SCC 103 : (1985) 1 SCR 322, 334- 5] . So far as the *audi alteram partem* rule is concerned, both in England and in India, it is well established that where a right to

a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in *Maneka Gandhi case* [(1978) 1 SCC 248 : (1978) 2 SCR 621, 676] at p. 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of [Article 311](#) is expressly excluded by the opening words of the second proviso and particularly its keywords “this clause shall not apply”. As pointed out above, clause (2) of [Article 311](#) embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of [Article 311](#), there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to [Article 14](#). This is, however, the only scope which [Article 14](#) can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of [Article 311](#) excluded, [Article 14](#) will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in [Article 311\(2\)](#) were the best

persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of [Article 311](#). What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" *inter alia* as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party

to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of [Article 311](#) makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by [Article 311\(3\)](#) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of [Arjun Chaubey v. Union of India](#) [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been

the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

138. *Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under [Article 226](#) or this Court under [Article 32](#), the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of [Article 311](#) to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."*

17. Upon perusal of the judgment of the Constitution Bench in the case of [Tulsiram Patel](#) (Supra), it is luculent that the constitutional provision has a far greater and all-pervading sanctity than a statutory provision, therefore, second proviso restricts application of [Article 311\(2\)](#) only in the circumstances as contemplated under Clauses (a), (b) and (c) of the second proviso. This clause uses the word “this clause shall not apply”, therefore, [Article 311\(2\)](#) shall not apply in the contingencies in clauses (a), (b) and (c) of the second proviso. The intention thereof has been expressed indicating that there is no scope for reintroduction of principles contained in [Article 311\(2\)](#) by a side door which the constitutional provision has expressly excluded. It is further clarified in the said judgement that if the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action of so applying would be mala fide and therefore void. This Court indicated that in such cases the invalidating factor may be referable to the [Article 14](#) distinguishing between a situation where the proviso has been properly applied and one where it has been improperly applied. Otherwise, if [Article 14](#) is applied in a manner to take the place of clause (2) that would mean to nullify the effect of opening words of the second proviso and frustrate the intention of makers of the Constitution. It is said that the second proviso is

based on public policy and is in public interest and for public good.

18. *The wording as used in clause (b) of the second proviso indicates the satisfaction of the Disciplinary Authority by using the word “it is not reasonably practicable to hold” the inquiry contemplated by clause 2 of [Article 311](#). The Court emphasised the meaning of “not reasonably practicable” as juxtaposed against not “impracticable”. It is intended that the requirement to hold an inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The Court contemplated certain situations therein and said that a common man must bear in mind that numbers may coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority holding the post and it is he who must visualize what is happening at the ground-zero. The Court clarified that the disciplinary authority is not expected to dispense with a departmental inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department’s case against the government servant is weak and must fail. In this connection, referring [Article 311\(3\)](#), it is held that the finality given to the decision of the disciplinary authority is not binding upon the Courts and the scope of judicial review is open to strike down*

the order dispensing with the inquiry as also the order imposing penalty.

19. Further, the Court emphasised the words used in clause (b) of second proviso that the disciplinary authority should record its reasons in writing for its satisfaction that holding an inquiry is not reasonably practicable. In case such reason is not recorded in writing or not valid and justifiable, the order dispensing with the inquiry and the order of penalty flowing therefrom would be void and unconstitutional. Emphasising the scope of judicial review, it is said that in the matters where administrative discretion is exercised, it is open to assail either under [Article 226](#) before High Court or under [Article 32](#) before this Court. Referring clause 3 of [Article 311](#) and reiterating that the decision of disciplinary authority indicating why it is not reasonably practicable to hold an inquiry is not binding on Court and the scope of judicial review is open. In the said contingency, the Court will examine the charges of mala fides if any made in the Writ Petition. It is emphasised that the Court, while exercising judicial review, would not sit as an appellate court but it shall consider the situation due to which, according to the disciplinary authority, it was not reasonably practicable to hold an inquiry. While examining the relevance of the reasoning, the Court ought to place itself as a disciplinary authority and consider whether in the prevailing situation, a reasonable man acting in a reasonable way, would

have taken the same decision as taken by the disciplinary authority. If the Court finds that the reasons are irrelevant, then satisfaction of the disciplinary authority may be held to be an abuse of power. In that situation, it would be open to the Court to take the case out of purview of that clause and the order of penalty would stand invalidated.

20. *In view of the foregoing conclusions of the Constitution bench in [Tulsiram Patel](#) (Supra), it can be safely observed that despite the use of the words “this clause shall not apply” in the second proviso, it shall not make power of [Article 311\(2\)](#) inapplicable. In fact, second proviso to [Article 311](#) is an exception for dispensing with the inquiry on satisfaction by recording the reasons in writing by such authority.*

21. *In view of the analysis of the judgment of the Constitution Bench in [Tulsiram Patel](#) (Supra), we have examined the impugned judgement passed by the High Court wherein in paragraph 19, while referring to the judgment of *Sudesh Kumar vs. State of Haryana and Ors.* (2005) 11 SCC 525 in respect of the principle of audi alteram partem and also referring to paragraph 101 of [Tulsiram Patel](#) (Supra), it has been observed by the High Court that the appellate authority had heard the appellant before affirming the decision of the disciplinary authority, it appears that the judgment of [Sudesh Kumar](#) (Supra) has not been appreciated in its true spirit by the High Court.*

22. *In our view, the reasoning as given by the High Court is completely misplaced, in particular, when the Court is examining the scope and applicability of clause (b) to the second proviso of Article 311(2), the reasoning assigned by the disciplinary authority ought to be relevant for dispensing with an inquiry which is the issue involved in the present case. Merely indicating that the reasons provided in writing have already been held justified by the CAT would not be sufficient in the context of law laid down by the judgment of Tulsiram Patel (Supra) merely observing that opportunity of hearing has been afforded by the appellate authority.*

23. *This case was heard on 04.02.2026. At the time of hearing, learned ASG appearing on behalf of the State vociferously contended that the reasoning to dispense with the inquiry finds its place in the preliminary inquiry report of the ACP whereby it was found that the complainant/witnesses have been traumatised, threatened or intimidated by the action of the criminals specially the police personnel involved therein and due to the close association of the police personnel with the hard-core criminals, there was every possibility that the appellant may approach the complainant/witnesses through his associates to threaten and intimidate them.*

24. *In this context, the argument advanced by the learned counsel for the appellant is that after lodging the FIR on 28.06.2017, the appellant was sent*

to custody on 29.6.2017 and was released on bail on 14.10.2017. In the meanwhile, the dismissal order dated 18.07.2017 was passed. Therefore, we deemed it appropriate to call for the said preliminary inquiry report which had not been placed before us for consideration.

....

36. It is relevant to note that applying the judgment of [Tulsiram Patel](#) (Supra), various cases have been decided by this Court indicating what may be a sufficient reason and how and in what circumstances holding a departmental enquiry is not reasonably practicable, and the scope of judicial review in such cases. In the judgement of this Court in [Ex. Constable Chhote Lal](#) (Supra) the Court held as thus:

“4. Having examined the rival contentions of the parties and bearing in mind the law [laid down by](#) this Court indicating the circumstances under which the inquiry under [Article 311\(2\)](#), second proviso, clause (b) of the Constitution can be dispensed with and applying the same to the facts and circumstances and the reasons advanced by the authorities in arriving at the decision, we have no hesitation to come to the conclusion that the order dispensing with the departmental inquiry is not in accordance with law and necessarily the order of dismissal cannot be sustained. We accordingly set aside the order of dismissal passed against the appellant and permit the departmental authority to hold an inquiry if so desired, in accordance with law and come to the conclusion in the said proceeding.

5. Normally, an order of dismissal on being set aside, the employee can claim back wages, but in this case we are not inclined to grant back wages to the employee concerned, more so, in view of the nature of charges against him.”

37. In the case of [Tarsem Singh](#) (Supra) this Court has observed that the power of dispensing with the constitutional remedy of a delinquent, should not be exercised lightly or arbitrarily, or out of ulterior motive

with the intent to avoid holding an enquiry. In the said case in paras 10 and 14, this Court observed as thus:

“10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under [Section 377](#) IPC. However, it may not be necessary for us to go into the said question.

xxx xxx xxx

14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of [Article 311](#) of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order.”

38. This Court in the case of [Risal Singh](#) (Supra), emphasized that while assigning the reason in writing it is imperative that such reason must be plausible and based on definite material. In the said case, the Court relied upon on para 130 on the judgment of [Tulsiram Patel](#) (Supra) and referring the same concluded in paras 9 and 10 as thus:

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

order of dismissal passed by the disciplinary authority has to pave the path of extinction.

10. *Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our observations herein should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs."*

39. *In the case of [Reena Rani](#) (Supra) this Court has again applied the law [laid down in](#) the judgment of [Tulsiram Patel](#) (Supra) and Jaswant Singh (Supra) and held that the order of dismissal did not disclose the reasons explaining why it was not reasonably practicable to hold a regular departmental enquiry and applicability of the proviso in such a case is not justified. The Court in para 7 in the said judgment observed as under: -*

"7. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental

enquiry for proving the particular charge(s) against the appellant.”

40. On overall analysis of the intent of [Article 311\(2\)](#), it is vivid that an employee holding a post in Union or State ought not to be dismissed or removed by an authority subordinate to the one by which he was appointed. It is further specified that a person shall be dismissed or removed or reduced in rank after an inquiry supplying the charges if any against him and giving a reasonable opportunity of being heard in respect of those charges. The applicability of the said clause is restricted in a situation wherein his conduct led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank records reason in writing upon satisfaction that it is not ‘reasonably practicable’ to hold an enquiry against him. In addition, where such power has been exercised by the President or the Governor it may be in the interest of security of the State or if not expedient to hold such an enquiry, then exceptional power under clause (c) of second proviso to [Article 311](#) ought to be exercised.

41. In case such a decision invoking the extraordinary power is taken by the competent authority in light of the judgment [Tulsiram Patel](#) (Supra) within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In addition, the satisfaction as recorded must be the objective satisfaction on the basis of material brought on record which ordinarily the disciplinary authority may take as a prudent person. Otherwise, dispensing with the enquiry is not permissible in law.”

26. At this stage, it is relevant to refer to Office Memorandum, dated 11th November, 1985, issued by the Government of India, Bharat Sarkar, Ministry of Personnel and Training, Administrative Reforms and Public Grievance and Pension,

Department of Personnel & Training, on the subject: *“Judgment of Supreme Court in Civil Appeal No. 6814 of 1983, Civil Appeal No. 3484 of 1982 etc. delivered on 11.07.1985 regarding the scope of second proviso to Art. 311 (2) of the Constitution”*. This Office Memorandum, which stood issued in pursuant to the judgment passed by the Hon’ble Supreme Court in Tulsi Ram Patel’s case (supra) reads as under:-

“OFFICE MEMORANDUM

Subject: *Judgement of Supreme Court in Civil Appeal No.6814 of 1983, Civil Appeal No.3484 of 1982 etc. delivered on 11-7-1985 regarding the scope of second proviso to Art. 311(2) of the Constitution.*

The judgement delivered by the Supreme Court on 11-7-1985 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the Judgement is merely due to an inadequate appreciation of the points clarified in this judgement and in the subsequent Judgement of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No.242 of 1982 and Civil Appeal No.576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.

2. *In the first place it may be understood that the Supreme Court in its judgement has not established*

any new principle of law. It has only clarified the constitutional provisions, as embodied in Art. 311(2) of the Constitution. In other words, the judgement does not take away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses(a), (b) and (c) of the second proviso to Art. 311(2) that the requirement of holding such an inquiry may be dispensed with.

3. *Even under these three exceptional circumstances, the judgement does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Art. 311(2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Art. 311(2) or corresponding these service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.*

4. *When action is taken under clause (a) of the second proviso to Art. 311(2) of the Constitution or*

rule 19(1) of the CCS (CC &A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgement of the criminal court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which is misconduct is likely to have on the administration and other estimating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reached the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the government Servant. This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one

not warranted by the facts and circumstances of the case.

5. *After the competent authority passes the requisite orders as indicated in the preceding paragraph, a government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a Court) will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.*

6. *Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are:-*

(i) *There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not, reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a*

reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

(a) Where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b)' of the second proviso to Art. 311(2), or rule 19 (11) of the CCS (CC &A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art. 311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both

be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

7. *It is true that the Art. 311(3) of the Constitution provides that the decision of the competent authority under clause (h) of the second proviso to Art. 311(2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor*

in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

8. *Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause(b) of the second proviso to Art. 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal.*

9. *As regards action under clause (c) of the second proviso to art. 311(2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311(2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; nor can*

it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question 1.e. whether they fall within the class of privileged documents or

whether in respect of them privilege has been properly claimed or not.

10. *The preceding paragraphs clarify the scope of clauses(a), (b) and (c) of the second proviso to Art. 311(2) of the Constitution, rule 19 of CCS (CC & A) Rules, 1965 and other service rules similar to is, in the light of the judgements of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefore, Imperative that these clarifications are not lost sight of while invoking the provisions of the second proviso to Art. 311(2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as clauses(a) and (c) and Service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Art. 311(2) or any Similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.*

11. *Ministry of Finance etc. are requested to bring the above clarifications to the notice of all the authorities serving under their control for their information, guidance and compliance.*

12. *Hindi version will follow.”*

27. A harmonious reading of the judgment of the Hon'ble Supreme Court in *Tulsi Ram Patel's case (supra)* and Office Memorandum dated 11th November, 1985 demonstrates that in terms of Clause (b) of the second proviso to Article 311 (2), an Authority can do away with the holding of the inquiry while dismissing an employee from service, but then, there must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable. What is further required is that such holding of inquiry is not practicable, has to be perceived from the perspective of a reasonable man, taking a reasonable view of the prevailing situation.

28. Illustrative cases, which are mentioned in this Office Memorandum dated 11th November, 1985, where holding of an inquiry can be done away with are; (a) where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or (b) where the civil servant by himself or with or through others threatens, intimidates and terrorizes the officer, who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or (c) where an atmosphere of violence or of

general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

29. It is also mentioned in the Office Memorandum that the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

30. It is also mentioned in the said Office Memorandum that condition precedent to the application of Clause (b) of the second proviso to Article 311 (2), or Rule 19(ii) of the CCS (CC &A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonable practicable to hold the inquiry contemplated by Article 311 (2) or corresponding provisions in the service Rules.

31. As per the Office Memorandum, this is a Constitutional obligation and if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional.

32. Office Memorandum further mentions that it should be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty and legally speaking, the reasons for dispensing with the

inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file.

33. In the backdrop of the above, when we peruse the impugned orders, a perusal thereof demonstrate that in all the cases before this Court, cyclostyle orders have been passed by the Authority. In fact, the impugned orders in the said three writ petitions firstly deal with the facts of each case, which obviously are different, but after giving the factual backdrop, verbatim word to word, same order has been passed in all the three cases and this verbatim order which finds mention in all the three petitions, is quoted hereinbelow from the petition of Sh. Neeraj Kumar:-

“Whereas, the State of Himachal Pradesh is confronted with a grave, persistent, and escalating threat from narcotic drugs and psychotropic substances, particularly heroin (chitta), which has caused deep and widespread damage to public order, the social fabric and the physical, mental, and moral well-being of the youth, who constitute the most vulnerable and productive segment of society, and

Whereas, official data unmistakably demonstrates a disturbing upward trend in offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, with 1,517 cases registered in the year 2021, 2,147 cases in 2023, 1,715 cases in 2024, and a sharp rise again to 2,149 cases in 2025, reflecting not only the growing scale and sophistication of the narcotics

menace but also its deepening penetration into society; and

Whereas, the Government of Himachal Pradesh has consistently declared and enforced a policy of zero tolerance towards any involvement of Government servants, particularly members of the police force, in offences under the NDPS Act, such involvement being viewed as a grave breach of public trust. institutional discipline, and service ethics; and

Whereas, the situation becomes exceptionally alarming and corrosive when police personnel themselves are found to be involved in illicit drug related offences, as such conduct not only defeats the very purpose of law enforcement but also erodes public confidence, weakens deterrence and undermines the credibility and moral authority of the police organization; and

Whereas, a police official is under a dual and inseparable obligation, first, to maintain law and order and enforce the law with integrity and impartiality and second, by virtue of service discipline and constitutional trust, to abstain from any conduct that amounts to criminality or promotes activities prejudicial to public interest, particularly offences which have a direct and devastating impact on society at large; and

Whereas, maintaining integrity, discipline, and public confidence in the police organization is a matter of paramount public interest.

Whereas, Inspector Neeraj Kumar, presently posted in 1st Indian Reserve Battalion, Bangarh, District Una (hereinafter referred to as the delinquent official), was initially appointed as a Constable on 04.04.2001 and was subsequently appointed as Sub-Inspector (Probationer) on 15.01.2010 and is governed by the Himachal Pradesh Police Act, 2007, the Punjab Police Rules, 1934 (as applicable to the State of H.P) and other relevant service rules;

Whereas, during the year 2021, the following serious criminal cases were registered against the delinquent official:

- 1. FIR No. 04/2021 dated 21.12.2021 under Section 7 of the Prevention of Corruption Act, 1988. Police Station SV & ACB, Hamirpur,*
- 2. FIR No. 168/2021 dated 22.12.2021 under Section 307 of the Indian Penal Code, Police Station Nadaun, District Hamirpur,*
- 3. FIR No. 170/2021 dated 22.12.2021 under Sections 21-61-85 of the NDPS Act, Police Station Nadaun, District Hamirpur, involving recovery of 0.84 grams of heroin(chitta);*

Whereas, a regular departmental enquiry was initiated by the Superintendent of Police, Hamirpur, vide order dated 26.12.2021 and a charge-sheet dated 24.09.2022 was served upon the delinquent official, to which he submitted his reply on 10.10.2022;

Whereas, upon conclusion of the departmental proceedings limited to service-related misconduct, the disciplinary authority while taking lenient view, vide order dated 21.04.2023, imposed the

penalty of forfeiture of two years of service for increment temporarily for proved misconduct relating to willful absence and negligence on 21.12.2021, while the departmental proceedings relating to criminal misconduct were kept-in abeyance due to pendency of criminal trials.

Whereas, Section 63 of the Himachal Pradesh Police Act, 2007, provides that a police officer of a rank superior to that of a Constable may himself perform any duty assigned by law or by a lawful order to any subordinate officer and may aid, supplement, supersede, or prevent the action of such subordinate whenever it appears necessary or expedient for effective enforcement of law or for preventing any infringement thereof, and

Whereas, Section 87 of the Himachal Pradesh Police Act, 2007. empowers the competent authority to dismiss or remove a police officer whose conduct is gravely prejudicial to discipline, public interest, or the reputation of the police force; and

Whereas, Article 311(2)(b) of the Constitution of India permits dispensing with a departmental enquiry where the disciplinary authority, for reasons to be recorded in writing, is satisfied that it is not reasonably practicable to hold such enquiry; and

Whereas, DoPT, GOI vide OM dated 25.11.2022 (para-B(ii), 9 and 10) has mentioned as under-

"...Action under clause (b) of the Second Proviso to Article 311(2)

Another important condition precedent to the application of clause (b) of the second proviso to Art. 311(2), or rule 19(ii) of the CCS(CC&A) Rules, 1965 or any other similar, rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art.311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the Inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief they should not be vague or they should not be just a repetition of the language of the relevant rules.

9. *A question has been raised whether, in a case where Clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry" The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under.-*

"It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in parl. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "Inquiry" in that clause includes part of an inquiry."

[Para 2 of the OM No. 11012/11/85-Estt. (A) dated 04.04.1986]

10. In para 8(1) above, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and,

on that basis, dispense with serving a charge sheet on the Government servant.

[Para 4 of the OM No. 11012/11/85-Estt. (A) dated 04.04.1986]..."

Whereas, upon a careful, conscious and independent assessment of the entire material on record, the nature of allegations, the prevailing circumstances and the settled constitutional parameters governing Article 311(2)(b), the undersigned records the following reasons and satisfaction for superseding and supplementing the order of punishment awarded by the Superintendent of Police, District Hamirpur dated 21.04.2023, whereby, the penalty of forfeiture of two years of service for increment temporarily was awarded to the delinquent official in the departmental enquiry

(i) That the allegations pertain to offences under the NDPS Act, a stringent special statute dealing with crimes that have a direct and devastating impact on society and any prima facie involvement of a police official in such offences fundamentally undermines the moral authority and credibility of the police force.

(ii) That continued retention of the delinquent official in service, even temporarily, would seriously erode discipline, weaken morale within the force and convey a message incompatible with the standards of integrity and probity expected from a disciplined police organization. To allow such police personnel who is accused in ND&PS case, to remain in uniform even for a single day would amount to condone a standard of behavior that is completely incompatible with the mandate of upholding and enforcing law.

(iii) That the criminal case under the NDPS Act is pending before the Ld. Trial Court and a departmental enquiry into the same alleged criminal misconduct would necessarily involve examination of the same witnesses and reliance on overlapping evidence, thereby creating a real and substantial risk of prejudicing the criminal trial and impairing the administration of justice.

(iv) *That the witnesses in the criminal case include police officials and civilian witnesses from the same area, many of whom are professionally or socially connected with the delinquent official, giving rise to a proximate and reasonable apprehension of intimidation, inducement, or subtle influence, which cannot be effectively neutralized through ordinary administrative measures. Further, there have been inputs that he has been trying to influence the witnesses.*

(v) *That the alternative course of placing the delinquent official under suspension has been considered and found insufficient, as suspension does not sever institutional association nor does it eliminate the possibility of indirect influence or the continuing erosion of discipline and public confidence.*

(vi) *That the pending departmental enquiry pertains only to service-related misconduct and does not adjudicate upon the alleged criminal misconduct under the NDPS Act, therefore, the present action does not amount to parallel adjudication or violation of principles of natural justice.*

(vii) *That the impracticability of holding or continuing a departmental enquiry in the present case is not based on administrative inconvenience but on objective circumstances which would render the enquiry ineffective, compromised, or illusory.*

(viii) *The continuance of a police official, against whom grave allegations under the NDPS Act are pending, in active service poses a serious and tangible risk to the integrity of narcotics law-enforcement. Such retention is likely to compromise sensitive operational plans, confidential records and source-based intelligence relating to drug trafficking and related offences, thereby imperiling ongoing investigations as well as prejudicing future anti-drug enforcement efforts.*

(ix) *The continued association of a police official facing serious allegations under the NDPS Act with the police organization also creates a reasonable and legitimate apprehension of institutional compromise in the mind of the public. This inevitably erodes public confidence in the fairness and credibility of the police administration, particularly when it is well-settled that law enforcement agencies must not only act in a fair*

and impartial manner but must also be seen to do so, more so in matters concerning narcotic drugs and psychotropic substances.

(x) That he has completely lost the confidence of the HP Police Department and, therefore, there would be no purpose of conducting an enquiry when the outcome of enquiry i.e. his unbecoming of police personnel being an accused in the aforesaid NDPS Act case and blatant defiance of the conduct and discipline in the HP Police and thereby his unworthiness for continuing in the HP Police is already established.

(xi) The conduct of a member of a disciplined force must not only be lawful but must remain above the reach of suspicion, In the context of the police service, the standard of integrity is absolute; like Caesar's wife, a police officer must be above reproach. By engaging in such grave misconduct, the Delinquent Officer has not only breached the trust reposed in them by the State but has fundamentally compromised the moral authority essential to their uniform. A police force cannot function effectively if its members harbor even a shadow of dishonesty or dereliction or involvement in the offences under the NDPS Act

Whereas, the cumulative effect of the aforesaid circumstances establishes that this is an exceptional case where it is not reasonably practicable to continue a departmental enquiry and insistence on the normal procedure would defeat public interest, compromise the administration of justice and undermine the credibility & discipline of the police force; and

Whereas, the power under Article 311(2)(b) is being exercised sparingly, as a measure of last resort, after due application of mind and for reasons recorded hereinabove;

Now, therefore, in exercise of the powers conferred under Article 311(2)(b) of the Constitution of India, read with Sections 63 and 87 of the Himachal Pradesh Police Act, 2007 and all other enabling provisions and for the reasons recorded hereinabove, the undersigned hereby supersedes and supplement the punishment awarded to the delinquent official vide

order dated 21.04.2023 and hereby dismisses Inspector Neeraj Kuinar, 1st IRBn, Bangarh, District Una, from service with immediate effect. The dismissal shall entail forfeiture of service benefits, except those admissible under the relevant rules, if any."

34. In order to satisfy itself as to whether any preliminary inquiry or otherwise an inquiry was undertaken by the Authority, in these matters before the passing of the impugned orders, the State was directed to produce the original record on 22.04.2026, in terms whereof, the matter was dealt with by the Director General of Police and the record, which was produced and which was perused by the Court, demonstrated that there was no record of any inquiry etc., except the impugned order being there on the file, passed by the Director General of Police.

35. As has been observed by me hereinabove, in all the three cases, the reasoning that has been given by the Authority while dismissing the petitioners, is the same. After referring to the relevant provisions of the Himachal Pradesh Police Act, 2007, i.e., Sections 63 and 87 thereof and then Article 311(2)(b) of the Constitution of India and thereafter, DoPT, Government of India OM dated 25.11.2022, in each case, eleven (xi) reasons have been culled out.

36. Verbatim same eleven reasons have been given for recording satisfaction for dispensing with the inquiry in all three cases, which is really strange. A perusal of these reasons

demonstrates that what weighed with the Authority while dispensing the inquiry was the alleged gravity of offences, the continued retention of the delinquent official in service, eroding discipline, weakening morale of the force etc., the factum of Criminal Cases under the NDPS Act pending in the Trial Court and departmental inquiry into the same alleged misconduct, unnecessarily involved examination of the same witnesses and reliance on overlapping evidence, thereby creating a real and substantial risk of prejudicing the criminal trial and impairing the administration of justice; the factum of witnesses in the criminal case being police officials and civilian witnesses from the same area, many of whom were professionally or socially connected with the delinquent official, giving rise to a proximate and reasonable apprehension of intimidation, inducement or subtle influence, which cannot be effectively neutralized through ordinary administrative measures.

37. Further reasons mentioned are that placing the delinquent officials under suspension has been considered and found insufficient, as suspension does not sever institutional association nor does it eliminate the possibility of indirect influence or the continuing erosion of discipline and public confidence and the departmental inquiry not based on administrative inconvenience, but on objective circumstances, which would render the inquiry

ineffective, compromised or illusory. The continuance of a police official, against whom grave allegations under the NDPS Act were pending, in active service poses a serious and tangible risk to the integrity of narcotics law-enforcement and such retention is likely to compromise sensitive operational plans, confidential records and source-based intelligence relating to drug trafficking and related offences, thereby imperiling ongoing investigations as well as prejudicing future anti-drug enforcement efforts and the continued association of a police official facing serious allegations under the NDPS Act with the Police Organization also creates a reasonable and legitimate apprehension of institutional compromise in the mind of the public., which inevitably erodes public confidence in the fairness and credibility of the police administration etc.

38. These reasonings given in the impugned order as to why the Authority decided to dispense with the inquiry, in the considered view of this Court, are no reasonings in the eyes of law, on the basis of which, the departmental inquiry could have been dispensed with under Article 311(2)(b) of the Constitution of India, because none of these reasons satisfy the test that on account of the same, an inquiry could not have been held or that holding of an inquiry was impossible by the Authority.

39. At this stage, this Court would also like to refer to Office Memorandum dated 25th November, 2022, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, copy whereof is appended as Annexure P-18, in CWP No. 2079 of 2026. This Office Memorandum is on the subject: “*Special Procedure in Disciplinary Action*” and with regard to action under Clause (b) of second proviso to Article 311, the following is mentioned in this communication: -

“.....Action under clause (b) of the Second Proviso to Article 311(2)

8. *Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are:-*

(i) *There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable, What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-*

(a) *where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear*

of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the Inquiry or direct it to be held; or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary Inquiry lightly or arbitrarily or out of ulterior motives of merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Art. 311(2), or rule 19(ii) of the CCS(CC&A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its. satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art.311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty, Legally

speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to "Incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

[Para 6 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985)

9. *A question has been raised whether, in a case where Clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the Issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under:-*

"It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the

Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry."

[Para 2 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

10. *In para 8(i) above, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.*

[Para 4 of the OM No. 11012/11/85-Estt. (A) dated 04.04.1986)

11. *It is true that the Art. 311 (3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Art.311(2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.*

[Para 7 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985)

12. *Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Art. 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second*

proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision applicable should be postponed for a reasonable length of time for the situation to return to normal.

[Para 8 of the OM No. 11012/11/85-Estt. (A) dated 11.11.1985”

40. Office Memorandum dated 25th November, 2022 is akin to the earlier Office Memorandum, which was issued in the year 1985, which has been quoted by me *in extention* hereinabove. The circumstances again reiterated by the Government of India by way of illustrations as to in what kind of cases holding of the inquiry can be done away with are where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses, who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so. In the present case, there is nothing on record to substantiate this kind of a situation.

41. Another illustration in the Office Memorandum is that where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer, who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held. Again, the record does not demonstrate the existence of any such situation in either of the cases.

42. Another illustration is that there is an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made. Again, in none of the cases there is such a situation.

43. A perusal of the impugned orders demonstrates that the Authority with premediated mind took the decision to dismiss the petitioners from service and the reasons which had been assigned therein, were just 'means' to justify the 'end'. There is not even an iota of evidence on record to demonstrate that any threat etc. was given by the petitioners to the witnesses or officers or any such circumstance existed which rendered the holding of the inquiry extremely difficult.

44. Therefore, this Court has no hesitation in holding that in the facts and circumstances of the present cases, the dispensing of the inquiry by invoking the provisions of Article 311(2)(b) of the Constitution of India is completely not sustainable in the eyes of law. The Authority would have been well advised to have proceeded in the matter, in accordance with law, by following the procedure of natural justice, rather than doing away with the same, simply on account of the fact that allegations against the were with regard to involvement under the NDPS Act.

45. This Court understands and appreciates the anxiety of the Department, but then, due process of law has to be followed and the exceptions, which have been carved out under Article 311 (2)(b) of the Constitution of India can be invoked only if circumstances so warrant. What is provided in Article 311(2)(b) of the Constitution of India is not a 'norm', but 'an exception'. Interest of justice demands that ordinarily a Government official should be dismissed from service only after holding an inquiry and in case the holding of the inquiry has to be done away with, then, circumstances should exist justifying the dispensation with the inquiry and the same cannot be dispensed with at whims and conjectures and on hypothesis, rather than concrete evidence and material on record. Herein, in these three petitions, no such grave circumstances existed, which could have justified the doing away of inquiry by the Authority concerned. Therefore, this Court has no hesitation in holding that dispensation of the inquiry in the present three petitions by the Authority by invoking the provisions of Article 311(2)(b) of the Constitution of India was not justified at all.

46. In view of the above discussions, the writ petitions are allowed and impugned orders, dated 12.01.2026, are quashed and set aside, with consequences to ensue. However, setting aside of these orders shall not come in the way of the Authority concerned in

proceeding against the delinquent officer/officials, in accordance with law, if so advised. Petitions stand disposed of accordingly, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

June 30, 2026
(bhupender)