Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

BOOTA RAM, CONSTABLE and others—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 2536 of 1979

March 3, 1980.

Constitution *of India* 1950—*Article* 311(2) (*b*) *and* (3)—*Punjab Police Rules,* 1934—*Rule* 16.1(2)—*Police official dismissed from service under rule* 16.1(2) *read with Article* 311(1) (*b*) *without holding of an enquiry—Reasons for dismissal conveyed to the official—Reasons for not holding an enquiry not so conveyed but separately recorded—Such order of dismissal stating clearly that holding of an enquiry would not be practicable—Dismissal of delinquent official—Whether vitiated—Nature and scope of power under Article* 311(2) *and* (3)—*Stated—Satisfaction of authority under section* 311(2) (*b*)—*Whether assailable.*

Held, that there is neither a constitutional nor any statutory enactment or rule which requires that a copy of the reasons recorded under clause (b) of Sub-Article (2) of Article 311 must be served or delivered upon the delinquent public servant. Therefore, there is no infraction of any law in not serving the official with a copy of the reasons. To vitiate a proceeding there must be a mandatory command which is disobeyed. Alternatively, a proceeding may be vitiated on establishing grave prejudice but where it is plainly made known to the delinquent official that reasons have been separately recorded, it cannot possibly be said that reasons have not been made available to the petitioner or that such grave prejudice has been caused so as to lead to vitiation of proceedings. Thus, where a delinquent official has been clearly informed that reasons have been separately recorded and there is no statutory obligation on the State to deliver or serve them upon him, it would amply suffice if on the request or demand of the official the said reasons are readily made available. Coming now to the actual application of sub-proviso (b), it is significant to underline the words "not reasonably practicable to hold such enquiry". It may be noticed that the requirement is not that the enquiry is impossible and cannot in any

circumstances be held nor is it the requirement of the law that such an enquiry is wholly or utterly impracticable. On the other hand, the requirement is at the lowest plane that it is not reasonably practicable to hold the kind of enquiry envisaged by law. Therefore, the mere fact that the reasons for not holding an enquiry have not been conveyed along with the order of dismissal, it would not vitiate the proceeding under Rule 16.1(2) of the Punjab Police Rules, 1934 read with Article 311(2)(b).

(Paras 12 and 20).

Held, that the doctrine of holding office during the pleasure of the President or the Government under Article 310 of the Constitution has been hedged and limited down by the conditions prescribed in clauses (1) and (2) of Article 311 of the Constitution. Both the Articles have therefore to be read together and construed as an integral whole. The second proviso to clause (2) of Article 311 of the Constitution specifies the three conditions in sub-clauses (a), (b) and (c) whereby the application of the requirements of an enquiry impetatively prescribed by clause (2) are to be entirely excluded. If any of the three conditions spelt out in these three sub-clauses of the proviso stands satisfied then the protection of clause (2) of Article 311 of the Constitution is altogether lifted. A comparison of sub-clauses (b) and (c) would show that when the constitutional protection of the holding of an enquiry is taken away, the highest pedestal is that of sub-clause (c), wherein the power to dispense with the enquiry is vested in the highest executive and no requirement of recording of any reasons is required. At the lower pedestal is placed sub-clause (b) which authorises only the empowered authority to dispense with the enquiry if it is not reasonably practicable to hold one. Here, the power is vested at a lower level and is not entirely subjective and the fetter of recording at least some reason for dispensing with the same is placed on the empowered authority. Though these limits are imposed yet as if to recompense for the same, clause (3) of Article 311 of the Constitution makes the decision of the empowered authority whether good or bad, as final. In effect, therefore, a clear pointer is given that even where the recording of reasons is made necessary, nevertheless finality is attached to the decision of the empowered authority as regards the practicability or otherwise of holding an enquiry and the same is constitutionally sought to be put beyond any challenge. Keeping these principles in view, it is clear that the exercise of power under Article 311(2)(b) of the Constitution is not easily assailable if not virtually impregnable. A challenge to the satisfaction or decision of not holding an enquiry can possibly be raised only if both the letter and spirit of the law are violated by the non-recording of any reason whatsoever or if the reasons

recorded are totally extraneous to the issue or if it can be established that the satisfaction of the authority is *mala fide* in nature. The power under Article 311 (2) (b) of the Constitution can therefore be assailed within the limited confines of the afore-mentioned situations and not otherwise.

(Paras 14 and 21).

Petition under Articles 226/227 of the Constitution of India that:—

(i) *a writ in the nature of certiorari/mandamus or any other appropriate writ quashing the impugned orders Annexures P-1 to P-31, which are in identical terms, dismissing the petitioners from the post of constables, in the Police Department, be issued;*

(ii) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;*

(iii) *the record of the case be ordered to be sent for;*

(iv) *the cost of the petition be awarded to the petitioners, as they have been unnecessarily dismissed from service.*

Kuldip Singh, Advocate, with R. S. Mongia, Advocate, *for the Petitioners.*

H. L. Sibal, Advocate with G. S. Chawla, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) The true import of the constitutional finality accorded by clause (3) of Article 311 of the Constitution of India, to the decision of the empowered authority, with regard to the reasonable practicability of holding an enquiry or otherwise is the primarily

significant question which falls for determination in this case. The issue arises in the wake of the widespread police agitation in the State of Punjab in May 1979, which later spilled over and engulfed the other parts of the country as well.

2. At the out-set it may be mentioned that this writ petition was originally presented jointly on behalf of as many as 31 police constables. However, the maintainability of the joint petition could not be sustained and by our detailed order dated September 14, 1979, the writ petition stands confined to only Jagdev Singh, petitioner (formerly petitioner No. 15). It has been averred on behalf of the petitioner that he has been working as a constable in the police Force with a satisfactory record. It is admitted that there has been an agitation by police officials in the various parts of the State of Punjab and at the material time he was posted at Ludhiana, though it is sought to be denied that the petitioner ever participated either actively or otherwise in the said agitation. However,—*vide* Annexure P/15, the Senior Superintendent of Police, Ludhiana, in exercise of the powers conferred on him under Punjab Police Rules 16.1 (2) read with clause (b) of the proviso to clause (2) of Article 311 of the Constitution of India, has dismissed the petitioner from service with immediate effect, whilst expressly holding that it was not reasonably practicable to hold a regular departmental enquiry against him. The impugned order also details specifically six acts of misconduct enumerated therein of which the petitioner was guilty. It is alleged that the impugned order indicates no application of mind by the dismissing authority and the six charges of mis-conduct enumerated therein were vague and lacked necessary details. This apart, it is claimed that these charges are false and the petitioner did not participate in any agitation and all the allegations in the impugned order have been concocted.

3. The impugned order of dismissal is first sought to be challenged on the ground that no reasons have been recorded specifically therein and that it has only been mentioned there that these reasons have been separately recorded by respondent No. 2. It is claimed that in view of the constitutional and statutory provisions, the petitioner is entitled to know all the reasons in the self-same dismissal order and as these have not been mentioned in the impugned order itself, the same is vitiated and liable to be quashed on this ground. In this context it is also the case that the petitioner

had met respondent No. 2 and requested that the reasons recorded by him, for not holding an enquiry be communicated to him, but this was not done and specifically he was told that the reasons could not be supplied.

4. It has been averred that there was no material before the Senior Superintendent of Police, Ludhiana, respondent No. 2, on the basis of which he could be satisfied that it was not practicable to hold an enquiry against the petitioner. Whilst admitting that the sufficiency of material cannot be questioned, it is reiterated that there was absolutely no material and no reason whatsoever with respondent No. 2 on the basis of which he could pass the impugned order of dismissal. Though the basic stand of the petitioner was that he had never participated in any agitation, it is submitted in the alternative that even if it be assumed that he did do so, he was nevertheless within his rights of forming an association and peacefully agitating for the betterment of his conditions of service and was, therefore, protected under Article 19 of the Constitution of India.

5. Lastly, it is the claim that the charges enumerated in the impugned order are vague and cannot form an adequate basis for hostile action against him.

6. In the Return, filed by Mr. G. S. Bhullar, IPS, Senior Superintendent of Police, Ludhiana, first a primary objection is taken that the satisfaction of the empowered authority under Article 311(2)(b) of the Constitution being essentially subjective, the petitioner has no right to challenge the validity of the order in Court. The plea of an alternative remedy by way of appeal and revision to the higher authorities has also been raised.

7. On merits, it is specifically averred that the petitioner was not discharging his duties faithfully and was not behaving like a disciplined police official. With regard to some specific acts of mis-conduct, para No. 2 of the written statement may be quoted *in extenso* :

> "In reply to the contents of this para, it is stated that some undesirable elements in the Police Force organised illegal demonstrations and *dharnas* in the State thereby jeopardising the security of the State of Punjab. The

petitioner alongwith others also contravened the prohibitory orders issued under Section 144 Cr. P.C. and took out a procession in Ludhiana on 12th May, 1979 and again on 14th May, 1979. He also raised anti-Government slogans and spread disaffection and disloyalty towards the Government amongst the Police force and thereby undermined the effectiveness of the Force in the preservation of security of the State. The petitioner had also been inciting his fellow police officials to participate in the subversive activities and thereby generated indiscipline, insubordination and disloyality in the force. He had also been persuading his fellow police officials to absent themselves from duty and had been threatening them with dire consequences if they made a report of his activities to senior officers. On receipt of reports from various quarters and after having fully satisfied about the truthfulness of the allegations made against the petitioner, respondent No. 2 being the authority empowered to dismiss or remove the petitioner from service was further satisfied that it was not reasonably practicable to hold an enquiry into the allegations and thought it fit to resort to proviso (b) of clause 2 of Article 311 of the Constitution of India and dismissed the petitioner."

It is then reiterated a number of times that on factual material, the respondent was amply satisfied that it was not reasonably practicable to hold a regular departmental enquiry. The reasons for the same were recorded in detail separately and a copy thereof being Annexure R/1 has been readily attached to the reply. It is then averred that the respondent being fully satisfied, both as regards the grave misconduct of the petitioner as also the impracticability of the enquiry, had passed the impugned order in accordance with the statutory and the constitutional provisions. It is specifically pleaded that the petitioner did take part in the agitation and after being fully satisfied about the correctness of all the facts enumerated in the Order Annexure P/15, the same was validly passed. It is the stand that the petitioner was indulging in subversive activities and threatening other police officials and spreading hatred and disaffection towards the government amongst

his fellow police officials. In para No. 10 of the Return, it is specifically stated that the petitioner never met respondent No. 2 and consequently, at no stage any demand for the reasons for not holding an enquiry was made nor was there any refusal to supply the same. It is then stated that there was more than sufficient material before the answering respondent for being satisfied that it was not reasonably practicable to hold any enquiry against the petitioner. Lastly, it is averred that the police agitation in the State far from being peaceful was subversive in character and in fact endangered the very security of the State itself.

8. To clear the deck for the consideration of more meaningful issues, it may be noticed at the very out-set that the learned counsel for the petitioner opened his argument with a flourish. Basing himself on the pleadings in the writ petition, a tall claim was sought to be raised that unless the reasons for not holding an enquiry are recorded in and form an integral part of the order imposing the disciplinary punishment itself (and thus communicated simultaneously) the whole proceedings would be vitiated. Counsel contended that in the instant case, the impugned order of dismissal, Annexure P/15 did not in itself contain the reasons for not holding the enquiry and therefore, it was *per se* illegal. However, neither principle nor precedent could be cited by the learned counsel for the petitioner in support of this obviously doctrinaire contention. It is unnecessary to examine the matter further because faced with the up-hill task, the learned counsel ultimately expressly and categorically abandoned this argument and conceded that the recording of reasons separately from the order of dismissal cannot by itself be fatal.

9. Learned counsel for the petitioner, however, fell back to take the firm and categoric stand that even if separately recorded, the reasons for the non-holding of the enquiry must be delivered to the public servant and the failure to do so is by itself an infirmity which is both fatal and incurable. It was contended that in the present case, it is the admitted position that the petitioner was not in terms served with the reasons for not holding the enquiry and a copy of the same was not delivered to him and therefore, the impugned order of dismissal cannot be allowed to stand.

10. Before one inevitably adverts to the legal and academic aspects of the necessity of communication of an adverse order, it

appears to me that on the firm facts herein, the question of non-communication does not arise and if at all it arises merely on the fringes. It is the admitted position that the petitioner was duly served with the order of dismissal, Annexure P-15 and the said order in no uncertain terms makes it plain that the reasons for the non-holding of the enquiry under Article 311(2)(b) of the Constitution of India had been separately recorded. For ease of reference, the relevant part of the Order may be quoted:—

> "AND WHEREAS, I am satisfied that his aforesaid activities have rendered him unfit to be retained in Police force.
>
> AND WHEREAS, I being the authority competent to dismiss him from the police force, am *further satisfied for the reasons recorded separately in writing that it is not reasonably practicable to hold a regular departmental enquiry against him.*
>
> NOW, therefore, I, G. S. Bhullar, IPS. Senior Superintendent of Police, Ludhiana in exercise of the powers conferred upon me under P.P.R. 16.1(2) read with proviso (b) to Sub-Article (2) of Article 311 of the Constitution of India, hereby dismiss Constable Jagdev Singh No. 817 from service with immediate effect".

It would be manifest from the above that the petitioner was thus clearly planted with the knowledge that in full compliance with Article 311(2)(b) of the Constitution of India, the enquiry was not being held against him, because it was not reasonably practicable to do so and the reasons therefor had been separately recorded of which clear notice was thus given to him. A sketchy and apparently a devious attempt was sought to be made on behalf of the petitioner that these reasons were sought to be withheld from him. However, this has not the least factual basis in view of the categoric affidavit and the firm stand of the respondent-State. It has been averred by respondent No. 2 in no uncertain terms that at no stage did the petitioner either meet him or make a demand for the reasons and consequently no question of refusing to supply the same arose. It is the respondent-State's stand that at no stage has it ever tried to withhold or keep the reasons secret and this is evident from making an express mention thereof in the impugned order of dismissal itself. Therefore, it was always open to the petitioner to ask for the

separately recorded reasons and there would have been not the least hesitation on behalf of the State to supply the same. In fact, at the earliest opportunity these reasons in the form of Annexure R/1 were readily and willingly disclosed and attached to the written statement filed by the respondent.

11. In view of the fact that no replication has been filed and even otherwise, Mr. Kuldip Singh very fairly conceded that within the writ jurisdiction, the aforesaid stand of the State must inevitably be accepted as the true factual foundation. On these premises Mr. Sibal for the respondent-State was able to plausibly contend that once the petitioner has been duly served with an order informing him clearly that reasons have been separately recorded for dispensing with the enquiry then this would in itself amount to adequate communication to the petitioner, in the eye of law and they could with ease ask for and secure a copy of the said reasons or seek access to the same.

12. I find merit in the stance taken by the respondent-State. It deserves highlighting that there is neither a constitutional nor any statutory enactment or rule which requires that a copy of the reasons recorded under clause (b) must be served or delivered upon the delinquent public servant. Therefore, there is no infraction of any law in not serving the petitioner with a copy of the reasons. To vitiate a proceeding, there must be a mandatory command which is disobeyed and here as noticed, there is none. Alternatively, a proceeding may be vitiated on establishing grave prejudice, but whereas in the present case, it is plainly made known to the delinquent official that reasons have been separately recorded and far from placing any impediments in having access to them, the respondent-State is more than willing to allow either inspection or deliver copies thereof when asked for it cannot possibly be said that the reasons have not been been made available to the petitioner or that such grave prejudice has been caused as to lead to the vitiation of the proceedings. I would, therefore, hold that where the delinquent official has been clearly informed, that reasons have been separately recorded and there is no statutory obligation on the State to deliver or serve them upon him, it would amply suffice if on the request or demand of the official, the said reasons are readily made available to him. That being so, it is evident that on the present matrix of establishment facts, the petitioner can make no grievance of any alleged non-communication of reasons.

13. Though on the aforesaid finding, little else or nothing survives on this specific aspect, yet it becomes necessary to notice and examine the vehemently pressed contention on behalf of the petitioner that a copy of the reasons under Article 311(2)(b) of the Constitution of India must be duly served or delivered to the petitioner. Counsel reiterated his stand that the delivery of these reasons, was so essential a requirement of the law that any deviation therefrom was both incurable and fatal.

14. It is platitudinous to observe that this extreme stand with regard to the service of a copy of reasons must necessarily take its hue and content from the constitutional provision under which it is sought to be claimed. For ease of reference, the relevant part of the well-known provisions of Article 311 of the Constitution of India may first be set down:—

> "311, dismissal removal or reduction in rank of persons employed in civil capacities under the Union or a State,
>
> (1) * * *.
>
> (2) * * *
>
> (Provided ———
>
> 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".

Now before adverting inevitably to the plethora of case law and in certain fields the head-long conflict of precedent, it is both refreshing and instructive to examine on principle the scope and purpose of Article 311(2)(b) of the Constitution of India. It is now a legal adage to say that the doctrine of holding office during the pleasure of the President or the Governor under Article 310 of the Constitution has been hedged and limited down by the conditions prescribed in clauses (1) and (2) of Article 311. Both the Articles have, therefore, to be read together and construed as an integral whole. The second proviso to clause (2) of Article 311 of the Constitution, however, specifies the three conditions in sub-clauses (a), (b) and (c) whereby the application of the requirements of an enquiry imperatively prescribed by clause (2) are to be entirely excluded. If any of the three conditions spelt out in these three sub-clauses of the proviso stands satisfied then the protection of clause (2) of Article 311 of the Constitution is altogether lifted. For our purposes, a reference to sub-clause (a) is not of any great relevance, but a comparison of sub-clauses (b) and (c) is both meaningful and instructive. In this hierarchy whereby the constitutional protection of the holding of an enquiry is taken away, the highest pedestal is obviously that of sub-clause (c). Herein, the power to dispense with the enquiry is vested in the highest executive and no requirement of recording of any reasons whatsoever is required and the language used therein would make it evident that the same is vested in the subjective satisfaction of the President or the Governor as the case may be. At the lower pedestal is placed sub-clause (b) which authorises only the empowered authority to dispense with the enquiry if it is not reasonably practicable to hold one. Herein, the power is vested at a lower level and is not entirely subjective and the fetter of recording at least some reason for dispensing with the same is placed on the empowered authority. Though these limits are imposed yet as if to recompense for the same, clause (3) of Article 311 of the Constitution makes the decision of the empowered authority—whether good or bad, as final, In effect, therefore, a clear pointer is given that even where the recording of reasons is made necessary, nevertheless finality is attached to the decision of the empowered authority as regards the practicability or otherwise of holding an enquiry and the same is constitutionally sought to be put beyond any challenge. It is the import of this clause (3) which as noticed at the out-set is one of the meaningful provisions which calls for interpretation herein.

15. In this context what deserves pointed notice at the out set is the fact that clause (3) aforesaid has relevance only to sub-clause (b) of the preceding second proviso. It was ultimately admitted on all hands that clause (3) is not in the least attracted to sub-clauses (a) and (c) of the above-mentioned proviso. Once it is so, it is evident that this clause would become an integral part of sub-clause (b) of the second proviso and indeed both must be read together. Even though the requirement of draftsmanship had necessitated that clause (3) be separately framed yet for the purposes of interpretation, it appears to be more than evident that both sub-clause (b) of the preceding second proviso and clause (3) must be viewed as a single integral provision and then alone a true construction thereof can possibly be arrived at. Indeed these two provisions so dovetail into each other that for the purposes of construction they must be deemed to read as follows:—

"311.

* * *.

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

The aforesaid aspect of the close-knit integration of sub-clause (b) of the second proviso to clause (2) and of clause (3) deserves particular highlighting because earlier precedents indicate that a welter of confusion has been generated by construing these provisions by either ignoring clause (3) or as if the two provisions stood in isolation.

16. It is the Constitution that we are called upon to expound and therefore, inevitably one must first turn to its words. Herein, reference may first be made to sub-clause (b) of the second proviso and in particular to the words "for some reason to be recorded by that authority in writing". Mr. H. L. Sibal learned counsel for the respondents had rightly underlined the use of expression "some reason". With plausibility it was pointed out that the founding fathers were not unaware of the well-known phraseology innumerably used by the legislature wherever the necessity of the recording

of reasons is felt to be a vital requirement. Inevitably therein, the language used is "for reasons to be recorded in writing" or words, closely analogous thereto. Therein, the use of the word "reason" is inevitably in the plural. However, in sub-clause (b), the framers of the Constitution seem to have advisedly chosen the use of its words as "some reason". Counsel contended that constitutional prescription seems to be that no exhaustive, elaborate or detailed recording of reasons is either envisaged or prescribed and indeed a single reason would be amply adequate (even though there may be many) and that alone could be the possible intent of the framers in not only first using the word 'reason" in the singular form and then further qualifying it with the word "some". Language apart, resort may also be made to the words of one of the architects of the Constitution—Dr. B. R. Ambedkar, whilst piloting this provision in the Constituent Assembly on July 8, 1949, which is set out below:—

> "Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clause (a) or (b) or (c), would be entitled to go to Court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word "satisfaction". It is a subjective state of mind of the officer himself or an objective test, that is to say, depending upon the circumstances ? It has been felt in a matter of this sort, it is better to cast out the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no court, shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given".

Viewed in the larger perspective, therefore, it seems to be clear that under Article 311 (2)(b) of the Constitution, indeed a single reason having relevance to the reasonable practicability of holding an enquiry or otherwise would amply satisfy the constitutional requirement. It is a canon of construction of statutes generally, and of the Constitution particularly that the deliberate use of words should not be altogether lost sight of. Therefore, there

seems to be both force and plausibility in the stand of the learned counsel for the respondent-State that sub-clause (b) neither requires a plethora of reasons nor any exhaustive elaboration thereof.

17. Coming now to clause (3), this in terms provides a constitutional finality to the decision of the empowered authority as regards the reasonable practicability or otherwise of holding an enquiry against the delinquent public servant, if any such question is raised. Counsel for the respondents rightly pointed out that the cloak of protection of clause (3) on this point is not to be easily ignored or papered over as it made little or no difference to sub-clause (b) of the second proviso. It deserves repetition that in the Constitution, no words are to be easily presumed as a surplusage and meaning must be given to every word thereof. Since this is so, the whole clause (3) cannot be easily by-passed or ignored as if it had little meaning though the words are strong nor would it be permissible to interpret sub-clause (b) *dehors* the provisions of the concluding clause. It is, obvious, therefore, that clause (3) of Article 311 of the Constitution is no redundant surplusage but in fact has been advisedly introduced with the clearest intent and purpose of rendering the decision of the empowered authority as final.

18. Mr. H. L. Sibal was rightly at pains to point out that even where ordinary enactment or statutory rules rendered a matter final then it could not be easily overriden. However, in the present case such finality is attached to the decision of the empowered authority by no ordinary enactment or rule and the obvious purpose is that if the prescribed requirements of sub-proviso (b) are apparently satisfied then the same is to be put beyond the pale of any judicial challenge. Therefore, there is patent weight in the submission that the finality envisaged by clause (3) of Article 311 of the Constitution of India is a meaningful prescription spelt but by the highest statutory plane, that is, the Constitution itself.

19. It next deserves to be highlighted that the finality aforesaid is sought to be attached to the decision of the empowered authority that it is not reasonably practicable to hold such an enquiry. It is true that herein this decision is not entirely subjective

because the recording of 'some reason' has been prescribed and therefore, some objective contant for such a satisfaction has to be recorded. Consequently such satisfaction must be indicated by recording 'some reason' which apparently should have a nexus to the practicability or otherwise of holding an enquiry. If that has been done, the constitutional prescription would stand satisfied. The sufficiency of the material on which such satisfaction has been arrived at or the weight or cogency of those reasons, if they are germane to the issue are not matters for the Court to consider, but for the empowered authority to be satisfied about. It deserves emphasis that herein the constitutional mandate is not the formation of any opinion for less any adjudication as if in a *lis*, but merely the satisfaction of the empowered authority indicated by 'some reason' should be recorded which has reasonable nexus to the practicability or otherwise of holding an enquiry.

20. Coming now to the actual application of sub-proviso (b), it is significant to underline the words 'not reasonably practicable to hold such enquiry'. At the very out set it may be noticed that the requirement is not that the enquiry is impossible and cannot in any circumstances be held, nor is it the requirement of the law that such an enquiry is wholly or utterly impracticable. On the other hand, the requirement is at the lowest plane that it is not reasonably practicable to hold the kind of enquiry envisaged by law. This distinction has to be kept in mind because it is one thing to hold, it is impossible or totally impracticable and entirely another to say that the empowered authority for some valid reason feels satisfied that reasonable considerations make the holding of the prescribed enquiry as impracticable.

21. Having noticed the nature and the character of the satisfaction which is to be arrived at by the empowered authority and the constitutional finality attaching to the decision of not holding an enquiry. it appears to be plain that the exercise of power under Article 311 (2) (b) of the Constitution is not easily assailable if not virtually impregnable. A challenge to the satisfaction or decision of not holding an enquiry can possibly be raised only if both the letter and the spirit of the law are violated by the non-recording of any reason whatsoever. Secondly, such a decision can perhaps be successfully assailed only if it is clearly established that the reason or reasons recorded by the empowered authority are not at all germane

to the issue and in fact are wholly extraneous thereto. Lastly, the exercise of the power under Article 311 (2)(b) of the Constitution could obviously be assailed on the grounds of established *mala fides* which would then render the action as a fraud on the power granted by the Constitution. Without intending to be wholly exhaustive, it appears to me, the action under Article 311 (2) (b) of the Constitution can be assailed within the limited confines of the afore-mentoned situations and not otherwise.

22. Once that is so, then it would be manifest that the tall claim of mandatory requirement of the service or delivery of a copy of reasons to the delinquent public servant must be tested on this anvil. This much at least is self-evident from sub-clause (b) to the proviso and clause (3) of Article 311 of the Constitution that in essence the decision of not holding an enquiry is vested primarily in the empowered authority and this decision has been rendered final by the Constitution. It had to be more or less conceded even on behalf of the petitioner that so far as the question of holding or not holding the enquiry is concerned the Constitution bars any appeal or revision or any other procedural forum or remedy against such a decisoin. If an appeal, revision or any other statutory remedy is barred, then a necessary inference would arise that there cannot possibly be a futile obligation to serve or deliver a copy of the reasons to the public servant. It appears to be plain that here there would be no magic in delivering a copy of reasons to the delinquent official which would by itself sanctify, or in the reverse the non-delivery thereof which would wholly invalidate or vitiate all the proceedings. To my mind, delivery or service of a copy of reasons is not a magic incantation which in itself sanctifies or invalidates the decision. The rule of communication of an order obviously has an underlying purpose. Evidently, this is that where the law provides a remedy against any hostile decision, the person concerned must be served with a copy thereof in order to enable him to resort to the statutory remedies. Non-delivery of the order in such cases might well vitiate it because the remedy provided by law would be rendered negatory and, therefore, such a violation may lead to serious consequences. Where, however, no such remedial procedure is provided and in fact a constitutional bar is interposed against any other remedy then non-delivery of the reasons must inevitably be devoid of any serious consequences. The basic premise in this context is that the concerned person must be served

with the reasons of hostile action against him in order to enable him to have resort to the remedy against the same. Where, however, as in the present case, the action against him has been accorded a degree of constitutional finality then the non-service of reasons even if held to be desirable is not the *sine qua non* of the action and mere non-delivery of the copy of the reasons cannot be raised to such a pedestal as to vitiate the whole action. It must, therefore, be held that where an order is final in the sense of having no appeal or revision provided against, its non-delivery would not lead to any fatal prejudice. It appears to be plain to commonsense that even if it were to be held that it would be desirable to plant the delinquent official with the knowledge of the reason for not holding an enquiry, the mere lack of serving a copy thereof, upon him cannot by itself be raised to a level that this should be held to destroy the whole proceedings as a consequence. The aforesaid view must not even remotely be construed to mean that the respondent State is entitled to withhold or keep secret the reason or reasons recorded under Article 311(2)(b) of the Constitution of India for not holding any enquiry. Indeed, it must be fairly noticed that this was never even the stand of the respondent-State. Mr. Sibal took up the plea that whilst on one hand there was no obligation on the respondent-State to straightway deliver the copies of the reasons recorded, to the petitioner, yet if asked for, they have to be and would be made readily available. In this context, it was highlighted that respondent-State at no stage attempted to withhold the same and had willingly disclosed the reasons at the earliest opportunity available by attaching Annexure R/1 to the written statement. This stand of the respondent which is being upheld would, of course, be subject to any claim of privilege which the State may take up and has to be individually adjudicated upon on the particular matrix of facts.

23. So far I have designedly avoided any reference to the morass of case law on the point whilst arriving at the aforementioned conclusions on principle and on the basis of constitutional provisions. However, in fairness to the learned counsel for the parties, one must now inevitably turn to the precedents cited at the bar and heavily relied upon (in some cases the same judgments pressed by both the sides). However, as a precursor to the consideration of the case law in greater details, it may be noticed at the very out set that Mr. Kuldip Singh, the learned counsel for the petitioner cited judgments under the Railway Servants (Discipline and Appeal) Rules. The basic

premise for relying on these judgments was that the provisions of rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 are in *pari materia* with Article 311(2)(b) of the Constitution and, therefore, all the considerations which would apply under the said Rules would be equally attracted under the constitutional provisions. It was on these premises that basic reliance was placed on authorities to which detailed reference would inevitably follow.

24. The fundamental fallacy from which the aforesaid argument of the learned counsel suffers is that a similarity is not identity. There is no manner of doubt that the provisions of rule 14(2) appear in some respects to follow Article 311(2)(b) and are, therefore, similar. However, this is a far cry indeed from saying that these provisions are identical and therefore, every consideration which may perhaps be attracted under rule 14(2) would *ipso facto* be applicable to the construction of Article 311(2), (b) of the Constitution. To highlight the meaningful differences, both in words, content and context of these two provisions, it is perhaps desirable even at the cost of some repetition to juxta pose the relevant provisions against each other:—

14. *Special Procedure in certain cases*—	311.
Notwithstanding anything contained in rules 9 to 13:—	(1) — — —
(i) — — —	(2) — — —
	Provided further this clause shall not apply—
	(a) — — —
(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, 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

(iii) the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

(c) — — —

(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.

The significant differences herein appear to be plain to the eye. Whilst rule 14(ii) is apparently couched in the context of the preceding rules 9 to 13, the constitutional provisions have no such limitation. It has to be borne in mind that rules 9 to 13 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred as 'Rules) lay down the procedure or imposition of various penalties and the procedure for imposing major penalties, contain elaborate provisions which entitle delinquent railway employees to a complete disclosure of the charges; the grounds on which they are based, and the material by which they are sought to be substantiated, and further, a right to inspect the records, to prepare defence, to cross-examine the witnesses, to produce oral and documentary evidence and of being heard against the proposed penalties. It is, therefore, that rule 14(ii) speaks of the contingency of not holding an enquiry in the manner prescribed, that is, in accordance with rules 9 to 13. On the other hand Article 311 (2)(b) of the Constitution postulates no earlier detailed procedures which require to be therefrom. Again the requirement under rule 14 is that in case the enquiry cannot be held in accordance with the procedural requirements of rules 9 to 13 then the disciplinary authority is entitled to make such orders as it deems fit. No such provision or mandate exists in Article 311. It will be evident herein-after that judicial precedents appear to be uniform in holding that under rule 14(ii) the Authority is bound to hold some sort of enquiry whatsoever, be it called a skeleton or skeletal enquiry. It cannot altogether dispense with this enquiry under the Rules because no

rule can possibly override the constitutional mandate. On the other hand, Article 311(2)(b) of the Constitution is categoric that either there is to be an enquiry or there is to be none and there is no mean or *via-media* in between. To highlight the difference, even rule 14(ii), when invoked requires a skeletal enquiry but Article 311(2)(b) of the Constitution, if invoked completely obviates or dispenses with the same. The difference herein is thus fundamental. Last but perhaps most important is the fact that clause (3) of Article 311 in no uncertain terms clothes the order of the empowered authority with a constitutional finality. There is not even an iota of such a provision under Rule 14. As has been noticed in the earlier part of this judgment, clause (3) is an integral part of Article 311 (2)(b) of the Constitution and the provisions have to be read as a single integrated whole. With great respect, if I may say so considerable confusion has arisen primarily because either clause (3) has been ignored from consideration in interpreting sub-proviso (b) or the two provisions have been read in water-tight compartments. Lastly Rule 14 further provides for consultation with the Commission where it is necessary and obviously Article 311 is again bereft of any such requirement.

25. Once the material differences betwixst Article 311(2)(b) of the Constitution and rule 14 of the Rules have been highlighted, it appears to be plain that it would not only be fallacious, but perhaps dangerous to advert to decisions under rule 14 for the construction of Article 311(2)(b) of the Constitution. It is a settled cannon of construction that in the interpretation of a statute one should not go to definitions or provisions in an altogether different statute or to construe it in the context of another provision unless perhaps the language is in absolute *pari materia*. It would be patently erroneous to hold that Rule 14(ii) and Article 311(2) (b) are in *pari materia*. The content import and characteristics of the two provisions are different and the similarity of language arising from the borrowing of the some of the provisions of Article 311 in Rule 14 should not mislead one to consider them as wholly identical. Once this is borne in mind, the patent and sharp line of difference betwixst precedent under Rule 14 and those under Article 311(2)(b) would be self-evident. This basic fact would by itself distinguish and rule out of consideration all authorities which primarily are under Rule 14 and indeed it would be a pit-fall to follow them unreservedly for a

correct interpretation of Article 311(2)(b) read with clause (3) in view of the basic difference betwixst the two provisions.

26. The view, I am inclined to take receives support from the following observations of the Division Bench of the Gujarat High Court reported in *Javantilal L. Patel and another* v. *Mohinder Singh, Sr. Divisional Commercial Superintendent, W. Rly. Baroda and others* (1):—

> "—— It would thus appear that the satisfaction which is to be reached under clause (b) of the proviso to Article 311(2) and that to be reached under Rule 14(ii) is substantially different. In the first case the satisfaction which is to be reached is that it is not reasonably practicable to hold an inquiry which complies even with the minimum of the requirement of reasonable opportunity, whereas in the other case the satisfaction which has to be reached is that it is not reasonably practicable to hold the elaborate inquiry as provided in the Rules. The mind has to be applied under two different provisions to two different aspects and circumstances which have to be considered in reaching the satisfaction would not necessarily be the same. It was ultimately conceded even by the learned Counsel appearing on behalf of the respondents that it is conceivable that though it may not be reasonably practicable to hold an elaborate inquiry as prescribed in the Rules, it may still be possible to afford to a railway servant reasonable opportunity as contemplated by article 311(2). It would thus appear that clause (b) of the proviso to Article 311(2) and Rule 14(ii) do not occupy the same field though at first sight there might appear to be some overlapping. Both are enacted to meet different situations and the considerations governing the exercise of powers under both and the circumstances in which the powers under both can be exercised not necessarily be the same. An exercise of power under one of them cannot, therefore, necessarily amount to exercise of power under the other".

27. In view of the afore-quoted observations and the preceding discussion, it would be unnecessary and indeed wholly wasteful to

(1) 1977 (1) S.L.R. 10.

distinguish individually the cases relied upon by the learned counsel for the petitioner which are primarily and substantially under Rule 14. Basic reliance had been placed by him on *P. K. Chowdhury and others* v. *Union of India and others* (2). A reference to the said judgment would show that the basic finding arrived at by the Division Bench was to the effect that the reasons recorded for not holding the enquiry under Rule 14 were not germane thereto and therefore, the order was vitiated. Only as an added reason, it was observed that the reasons for not holding the enquiry should also have been communicated to the petitioners. For holding so, the basic assumption seems to be that under the rules, the issue of not holding of an enquiry was appealable. The sharp distinction here is that under Article 311, once the empowered authority, for valid reasons, becomes satisfied that it is not reasonably practicable to hold an enquiry then such a decision is put beyond the pale of appeal or revision. This aspect either did not arise or has not received the least consideration by the Bench and the judgment at points proceeds on the assumption that Rule 14 corresponds with Article 311(2)(b) without noticing the substantial differences therein and basic postulate of clause (3) of Article 311. The learned Judges of the Division Bench of Madhya Pradesh High Court took the view that they were following the prevalent view in Gujarat, Allahabad and Patna High Courts, but it is evident that the Gujarat High Court in Division Bench judgment in *Jayantilal L. Patel and another's case* (supra) has taken a view, which is certainly not in consonance with the Single Bench judgment in *Bholanath Khanna* v. *Union of India and others,* (3), on which also reliance was placed by Mr. Kuldip Singh. It suffices to repeat here that this judgment is again primarily under Rule 14 and takes no note of the differences in language and content of the said provision with that of Article 311. Again the judgment of the Bombay High Court reported in *Mohomed Tayum* v. *Union of India and others* (4), is of no aid to the petitioner because the primary finding therein was that the reasons recorded under Rule 14, for not holding the enquiry were superficially misconceived and irrelevant and therefore, they did not afford any legal justification for dispensing with the enquiry.

(2) 1976 Madhya Pradesh Law Journal 690.

(3) 1975 (1) S.L.R. 277.

(4) 1977 Lab. & Industrial Case, 1590.

Similarly, *Union of India and others* v. *Nirmal Kanti Chander Roy and Ors.* (5), again turns primarily on the question whether the reasons recorded were relevant and it was held that the mere absconding of the delinquent public official could not by itself be the ground for dispensing with the enquiry and consequently the basic reason thereof, was not germane to the issue. It would thus be plain that the aforementioned authorities, which were relied upon by the learned counsel for the petitioner, are of little aid in the present case, which is purely and squarely under Article 311(2)(b) and clause (3) of the Constitution of India.

(27-a) As noticed in a passing reference earlier, even under Rule 14, there appears to be a sharp divergence of judicial precedent with regard to the necessity of serving or delivering a copy of the reasons to the delinquent public servant and the consequences which would flow therefrom. This is apart from the distinction betwixt Rule 14 and Article 311. To sum up at the out-set, it appears to be patent that the weight of authority even under Rule 14 is in favour of the respondents and the High Courts of Calcutta, Gujarat, Rajasthan, Assam and Delhi have held in no uncertain terms that the delivery of a copy of the reasons to the delinquent official, in the very first instance is not the requirement of law nor any fatal consequences flow therefrom. Reference in this connection may first be made to the Division Bench judgment of the Gujarat High Court in *Jayantilal L. Patel and another's* v. *Mahinder Singh, Sr. Divisional Commercial Superintendent, W. Rly. and Baroda, others,* (supra 1), which has been earlier quoted in a slightly different context. The view of the Calcutta High Court is again consistently in favour of the respondents and it suffices to mention the Division Bench judgment *in Chief Mechanical Engineer, E. Railway and others* v. *Jyoti Prasad Banerjee and Ors.*, (6) wherein, on appeal the contrary view of the learned. Single Judge was reversed, and the later Division Bench judgment in *Union of India and others* v. *P. C. Choudhury and Ors.* (7), which reiterates the same view. The trend in the Gauhati High Court is again the same as is apparent from the Division Bench judgment in *Manik Ranjan Senqupta* v. *General Manager, North-east Frontier Railway, Malingaon and*

(5) 1976(2) S.L.R. 447.
(6) 1975 (2) S.L.R. 437.
(7) 1976 (2) S.L.R. 819.

others, (8), where Chief Justice Pathak speaking for the Bench held in no uncertain terms that it was not necessary that the reasons for dispensing with the enquiry should be incorporated in the order of the removal and it was apparently found sufficient if they existed on the record. Then a learned Single Judge of the Delhi High Court has again held in *R. K. Misra* v. *The General Manager, Northern Railway, New Delhi and anr.*, (9), in no uncertain terms that it is not necessary to deliver a copy of the reasons for dispensing with the enquiry to the concerned employee, even under Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968. Similar view was taken in a Single Bench judgment of Rajasthan High Court in *Ram Khilari* v. *Union of India and others* (10).

28. It would be plain from the above that a very sizable body of the High Courts have taken the view that even under Rule 14, no delivery of a copy of the reasons for dispensing with the enquiry in the first instance is necessary and no adverse results flow therefrom. If that be so, then it is manifest that this would be doubly so under Article 311(2)(b) read with clause (3), because the same clothes the order of the empowered authority with finality and as already noticed, the constitutional provisions are substantially different from the Rules. It must, therefore, be held that principle apart the weight of precedent again seems entirely to be in favour of the respondents on this point.

29. In fairness to Mr. Kuldip Singh, it must, however, be mentioned that in reply he had sought to derive some sustenance from the observations in *M/s. Ajantha Industries and others* v. *Central Board of Direct Taxes, New Delhi and others*, (11). That judgment, however, is plainly distinguishable. It was rendered under Section 127(1) of the Income-tax Act, the provisions of which have no parity or similarity to the constitutional provision, which we are called upon to interpret. To distinguish that judgment, Mr. Sibal placed reliance on *Kashiram Aggarwalla* v. *Union of India and others*, (12) and *S. Narayanappa and others* v. *The Commissioner of*

(8) 1975 (II) L. and Journal cases, 1530.
(9) 1977 (2) S.L.R. 127.
(10) 1976 (2) S.L.R. 827.
(11) 1976 S.C. 437.
(12) A.I.R. 1965 S.C. 1028.

Income-tax, Bangalore, (13). This apart it deserves to be recalled that the Calcutta Division Bench in *Union of India and others* v. *P. C. Choudhury and Ors.* (supra) expressly referred to *M/s. Ajantha Industries and others case* (supra), and for detailed reasons distinguished the same I am inclined to concur with that view and it would be wasteful to repeat those reasons over again.

30. On the language of the constitutional provisions itself, on principle and on the weight of precedent, it must be held, there is no legal obligation on the respondent—State to serve a copy of the reasons for dispensing with the enquiry on the delinquent employee. No adverse consequences would, therefore, flow from the non-delivery of these reasons to him if they have otherwise been duly rcorded in accordance with law. It is, of course, elementary that the said reasons cannot be withheld from the employee and if a proper demand therefor is made by him, then access thereto is not to be denied.

31. Once it is held as above, it is obvious that the ancillary argument, that all the factual material on the basis of which the reasons have been recorded must also be delivered to the delinquent employee would necessarily crumble along with the main contention.

32. The last contention raised on behalf of the petitioner was that the reasons recorded by the empowered authority for not holding the enquiry, were either vague and in any case not germane to the issue. The argument must inevitably turn on the contents of the reasons and for facility of reference the relevant parts thereof may first be quoted:—

> "I have carefully gone through the reports made by various police officers and have satisfied myself about the truthfulness of the allegations against each of the officials. I am satisfied that the activities of constables Madan Gopal 2213, Jagdev Singh 817, Jang Bahadur 2980, Mehar Singh 1612, Sohan Singh 391, Kewal Singh 1011, Hari Ram 264, Sukhminder Singh 1400, Manmohan Singh 2076, Charan Dass 525, Sadhu Singh 987, Gurcharan Singh 953, Amarjit Singh 1923, Ram Lall 1930 and Joginder Singh 2104 are dangerously prejudicial to the discipline and good conduct of Police force. These officials have been secretly spreading disaffection and disloyalty towards the Government

(13) 1967 S.C. 523.

amongst the Police force and thereby undermining the effectiveness of the force in the preservation of security of State. They have also been threatening their fellow Police officials with dire consequences if they do not collaborate with them or report their activities to senior officers.

I am of the opinion that the only way to prevent them from spreading further dis-affection, disloyalty and indiscipline the Police force is to immediately eliminate their presence in the disciplined force by summarily dismissing them from service without holding a regular departmental enquiry. The holding of regular departmental enquiry under P.P.R. 16.24 will provide them ample opportunity to continue their subversive, prejudicial and illegal activities. Further more, they have overawed their fellow Police officials whose evidence would be necessary to prove the allegations of grave subversive act against them and those Police officials are afraid of appearing in evidence against them on account of threat to personal safety".

33. Now in evaluating some reason or reasons recorded by the empowered authority to the effect that it was not reasonably practicable to hold an enquiry, it must be borne in mind that it has to take into consideration not merely the initiation thereof, but also whether circumstances in future would permit its final culmination and the danger or adverse effect which may inevitably follow in the proceedings. The empowered authority has to visualise the period of time which would be required to complete the enquiry and assess whether in future it would be possible to bring it to a close. Therefore, the empowered authority has not only to see the conduct of the delinquent officials in the past, but to visualise further whether the circumstances in future would reasonably permit for a proper and just conclusion of the enquiry. Particularising a little in the present context, it was plausibly argued on behalf of the respondents that herein the empowered authority apart from other factors had also to guard reasonably against the ill-effects of launching on a protracted enquiry. It was the State's stand that the issue in correct perspective is not what has already happened which may render an enquiry impracticable, but equally as to what is likely to happen and may well happen in future to affect the conduct thereof. Again,

it cannot be lost sight of that it was during the zenith of a widespread police agitation in the State and when it was in full swing that the empowered authority was called upon to make the sensitive decision under Article 311(2)(b) of the Constitution. Learned counsel for the respondents submitted that in the present context, the empowered authority has taken and was entitled to take, into consideration the larger ramifications of a long enquiry, the adverse effect of a deliberate and distorted publicity as also the danger of political entanglement which might ensue from the decision. It was submitted that prolonged enquiries of this nature against not one, but a large number of police personnel might well have sparked off a fresh spurt to an already dangerous agitation and the overall risk of the matter spreading and getting out of hand was yet another factor which had come in the ken of the empowered authority. Lastly in appraising the reason or reasons recorded, the matter is obviously not to be considered in a vacuum. For instance, as in the present case, it cannot be lost sight of that the empowered authority was the Superintendent of Police of the district who ordinarily would know his Force and men well, as also the officers manning the same and their calibre. Therefore, the subjective knowledge of the empempowered authority in arriving at a decision on the basis of some objective data is not to be ruled out and as has already been noticed, the requirement of the Constitution is not that a virtually thesis or a judgment must be rendered by an empowered authority to comply with the requirement of recording 'some reason' for arriving at its satisfaction. In a given case, the Superintendent of Police of the district, may himself know the delinquent official well as also the integrity of the men who have made the necessary reports providing the objective data, and the authenticity of certain facts, which may be within his personal knowledge and many other imponderables which must necessarily enter into the ticklish question of the reasonable practicability of holding an enquiry or otherwise, in an atmosphere which undoubtedly was surcharged and pregnant with mischief. In such a situation, an officer has to foresee that one ignition point may lead to a conflagration which may well be beyond extinguishing and thus rendering the holding of an enquiry not only impracticable but even dangerous. Without pretending to be exhaustive, the aforementioned factors must come for consideration and may well provide 'some reason' to the empowered authority for his satisfaction for dispensing with an enquiry to which the Constitution unreservedly has chosen to attach finality.

34. Now evaluating the afore-quoted reasons in the light of the above, it appears to be more than plain that it is idle to contend that these reasons are either non-existent or not germane to the issue. That there was factual data before the empowered authority is evident from the fact recorded clearly therein that he had gone through the reports made by various police officers and had satisfied himself about the truthfulness of the allegations. On that basis, the empowered authority had come to the conclusion that the activities of the petitioner and others along with him were dangerously prejudicial as they were designedly spreading disaffection and disloyalty in a disciplined Force and virtually undermining its effectiveness. In terms, it was noticed that the petitioner and others were not merely persuading, but threatening their colleagues with dire consequences, if they did not collaborate with them, or if they obeyed their senior officers. Having noticed the past and present conduct of the petitioner and others, the empowered authority was entitled to take the same as an indication of their intentions in the future. On all this data, the empowered authority expressly noticed that it was of the opinion that it was necessary to prevent the petitioner and others of his kind from totally undermining the discipline of the police force and this could perhaps be done only by immediately eliminating their presence therefrom. In terms, it was noticed that the holding of a regular departmental enquiry could only provide further ample opportunity to the petitioner and others to continue their subversive, prejudicial, and illegal activities. In particular, it was noticed lastly that the petitioner and others of their kind had overawed and terrorized other police official to an extent that they would not appear to give evidence against them and therefore, virtually throttled any enquiry which might be instituted. It appears to be plain that the aforesaid reasons far from being not germane in fact go to the root of the considerations which have necessarily to be taken into account for arriving at a conclusion whether it is reasonably practicable to hold an enquiry or otherwise.

35. Obviously each case has to be construed and evaluated on its own facts but the basic premise in the situation of a widespread (and perhaps less dangerous) strike is well summed up in the words of the Division Bench judgment in *Jyoti Prasad Banerjee's case*

(supra), whilst upholding the reasons recorded for dispensing with an enquiry which are as follows:—

> "We shall have to view the situation in the context of the all-India strike observed throughout the country in all railways by a considerable section of the railway-employees which was unprecedented in its extent and magnitude. While it may be permissible for the railwaymen to start movement and strike for securing their legitimate demands, which, however, in this case was declared illegal, the petitioners according to the appellants, resorted to the uniform pattern of activities in their attempt to make the strike a success. This included, according to the appellants, intimidation of loyal workers of bodily threat, inciting them to join the strike and preventing them from joining the duties. Here was not the case of only a number of persons being involved but the strike was on a jignatic scale with large number of persons joining the strike and, as we have indicated, the activities of the petitioners were of uniform pattern ——— If in this situation the administration decided to take immediate steps to tackle situation which posed a threat to the national economy and to the supply of food-stuffs and essential commodities throughout the country, it was only inevitable that the reports and orders would also be of the same uniform pattern in the context of such circumstances ——— "

With respect I entirely concur with the aforesaid view and reiterate that no fault can be found with the detailed reasons recorded,—*vide* Annexure R/1 by the empowered authority for holding that it was not reasonably practicable to hold an enquiry.

36. Before parting with this judgment, one must notice that readiness with which respondent State placed the record before the Court to substantiate its claim of the plathora of factual material which provided the foundation for the impugned reasons.

37. As all the contentions raised on behalf of the petitioner have been found to be without merit, this writ petition must necessarily fail and is hereby dismissed. Parties, however, are left to bear their own costs.

H.S.B.