IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WRIT APPEAL No. 18 of 2022

1. The State of Manipur represented by the Addl. Chief Secretary (Home), Government of Manipur.
2. The Director General of Police, Government of Manipur.
3. The Superintendent of Police / CID (Tech), Manipur.
4. The Superintendent of Police / CID (SB), Manipur.

.... Appellants [Respondents No. 1, 2, 3 & 4 in the Writ Petition]

- Versus -

Shri Laishram Sushil Singh, aged about 39 years, S/O L. Birendrakumar Singh of Nagamapal Singjubung Leirak, P.O. & P.S. Imphal West, District Imphal West, Manipur.

.... Respondent [Writ Petitioner]

B E F O R E
HON'BLE THE CHIEF JUSTICE MR.SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI

For the appellants	:	Mr. H. Debendra, Deputy Advocate General assisted by A. Bheiga, Advocate
For the respondent	:	Mr. K. Roshan, Advocate assisted by Mrs. Donnapriya Asem, Advocate
Date of hearing	:	04.04.2024
Date of Judgment & Order	:	**18.11.2024**

JUDGMENT & ORDER
(CAV)

[Golmei Gaiphulshillu Kabui, J]

[1] Heard Mr. H. Debendra, learned Deputy Advocate General appearing on behalf of the appellants and Mr. K. Roshan, learned counsel appearing on behalf of the respondent.

[2] The present writ appeal has been instituted with the following prayer:

(i) To admit this writ appeal and call for records of writ petition (c) No. 591 of 2017;

(ii) To set aside the impugned judgment and order dated 27.01.2020 passed in writ petition (c) No. 591 of 2017;

(iii) To dismiss the writ petition (c) No. 591 of 2017.

[3] The grounds for instituting the instant writ appeal are as under:

(i) The Ld. Single Judge erroneously came to the conclusion and decision that the satisfaction of the Governor as envisaged in Article 311(2) Second proviso, Clause (c) of the Constitution of India for dismissing a person by invoking the provision is the personal satisfaction of the Governor. Such conclusion and decision is

contrary to the decision of the Hon'ble Supreme Court (7 Judges Bench) rendered in ***Shamsher Singh -Vs- State of Punjab[(1974) 2 SCC 831]*** and also contrary to the decision of the Division Bench of this Hon'ble Court rendered in a catena of similar cases;

(ii) Under the Constitutional Law, the satisfaction of the Governor as envisaged in Article 311(2) Second Proviso, clause (c) of the Constitution is not the personal satisfaction of the Governor but the satisfaction to be arrived with the aid and advice of the Council of Ministers;

(iii) As per Rules of Business or any other provisions of law or under the relevant Office Memorandum dated 16-08-2008, it is not required for the Governor to put his personal opinion or reasons for arriving at his subjective satisfaction as contemplated under Article 311(2) Second Proviso, Clause (c) of the Constitution of India.

And it is only when the Governor disagree with the proposal/ recommendation of the Committee of Advisors and proposal of the

Hon'ble Chief Minister, that he is to give reasons and not otherwise;

(iv) The proposal of Police Department for dismissing the Writ Petitioner by invoking Article 311(2) Second Proviso, Clause (c) of the Constitution of India by enclosing Secret Report have been verified and vetted by the Home Department, Government of Manipur and placed before the committee of Advisors, an expert body required as per instruction of the Government of Manipur issued by the Department of Personal and Administrative Reform (DP & AR) vide Office Memorandum dated 16-08-2008. The Committee of Advisors after due consideration of the reports and dossiers submitted by the Home Department, recommended for dismissal of the Petitioner from service by invoking Article 311(2) Second Proviso, clause (c) of the Constitution, the proposal/ recommendation was placed before the Chief Minister for approval. The Governor being satisfied with the recommendation of Committee of Advisors and proposal of the Chief Minister, approved the recommendation on 24-

04-2017. After approval of the Governor, as per rule the Under Secretary (Home), Government of Manipur in the name of Governor issued the order dated 13-07-2017 dismissing the Writ Petitioner with Immediate effect in the interest of the Security of the State;

(v) The Committee of Advisors after due consideration and examination of records, it came to the conclusion that the Writ Petitioner willingly indulged in the activities of the banned unlawful organization PLA/RPF which are prejudicial to the Security of the State;

(vi) There were sufficient incriminating materials on record against the writ petitioner to arrive at the subjective satisfaction of the authority that it was not expedient to hold enquiry for dismissing the Writ Petitioner and it is not for the Court to examine the adequacy or otherwise of materials upon which Governor arrived at his subjective satisfaction that it was not expedient to hold an enquiry in the interest of the security of the State;

(vii) The power conferred under clause (c) of Second Proviso to Clause (2) of Article 311 of the

Constitution of India is in the nature of high prerogative which could not be lightly interfered by the Writ Court;

(viii) Satisfaction of the Governor of the State as required under Article 311(2) Second proviso clause (c) of the Constitution will not be subjected to judicial review unless the same has been malafide or based on extraneous or irrelevant grounds as held by the Hon'ble Supreme Court in ***Union of India-Vs-Tulsiram Patel (1985)3 SCC 398***. In the present case, there is no finding in the impugned judgment and order that the dismissal order was issued in malafide or extraneous or irrelevant grounds;

(ix) The writ petitioner's conduct is a threat to the security of the State as he could have been deliberately planted by the prescribed organization PLA/RPF to continue his operation on their behalf within police organization covertly;

(x) Non-filing of charge sheet in pending criminal case or pending departmental enquiry against the Writ Petitioner will not make any difference

in dismissing the Writ Petitioner from service by invoking Clause (c) of Second Proviso to Clause (2) of Article 311 of the Constitution of India vide Government order dated 13-07-2017 and there is no legal bar to dismiss the writ petitioner under the said proviso of the Constitution of India;

(xi) The Ld. Single Judge cannot examine the correctness or veracity of the allegations. The fact remains that there were certain allegations of serious nature. And such allegations have far reaching implications for the security of the State;

(xii) While examining an order issued for dismissing a person by invoking clause (c) to Second Proviso to Clause (2) of Article 311 of the Constitution, the Court cannot look the sufficiency or correctness of materials and also about the relevancy as long as some materials are found relevant which forms the subjective satisfaction;

(xiii) Pendency of criminal proceedings/ **under investigation is a different aspect** and it does

not debarred the state in taking action under Article 311(2)(c) of the Constitution of India.

(xiv) There is no infirmity in the order dated 13-07-2017 dismissing the petitioner from service in the interest of the Security of the State by invoking Clause (c).

[4] In order to appreciate the contentions raised by the parties hereto, some basic facts leading to filing of the aforesaid writ petition must be stated. Accordingly, the facts of the parties are set out hereunder.

[5] The writ petitioner joined service as Sub-Inspector Police in the State Police Department in the year 2007. The Police Department, Manipur vide their confidential letter No. U/2 (47/H) PHQ-2015/11529 dated 23-12-2015 submitted a proposal to the State Home Department for dismissal of service of the writ petitioner, Shri. L. Sushil Singh, Sub-Inspector of Police who was posted at CID (Technical), Manipur by invoking provision of Article 311(2) (c) of the Constitution of India for his involvement in subversive activities and his association with the banned unlawful terrorist organization People's Liberation Army/Revolutionary People's Front (PLA/RPF in short) despite being a member of a discipline Police Force in the interest of the security of the State.

[6] In the proposal for dismissing service of writ petitioner under Article 311(2)(c), the Secret Report of the Police Department giving details of his arrest while posting at Chief Minister's Bungalow and registration of FIR No. 21 (1) 2015 U/S 38(1) UA(P) Act and Section 5 (b) Official Secrets Act, 1923 and details of his connection with the banned underground organization, PLA/RPF and his continuing involvement in subversive activities which are prejudicial to the security and sovereignty of the country were stated.

[7] The State Government, having no alternative in the peculiar facts and circumstances of the case, has been compelled to act on the **secret report**. The proposal of the Director General of Police, Manipur, which has been verified and vetted by the Home Department, was placed before the Committee of Advisors constituted for the purpose of examination for invoking Article 311(2) (c) for dismissing service of an employee by dispensing the departmental inquiry.

[8] The Committee of Advisors recommended for dismissal of the petitioner from service under Article 311(2) (c) of the Constitution of India as it was not expedient to hold Departmental Enquiry in the interest of Security of the State and the prejudicial activities of the petitioner were affecting the sovereignty and integrity and security of the State. By following the procedures as required under the law, the matter was placed before the Hon'ble Chief Minister and Governor of Manipur, the Governor being

satisfied with the recommendation of Committee of Advisors and the proposal of the Chief Minister, Manipur approved the recommendation of Committee of Advisors on 24-04-2017. As such the Under Secretary (Home), Government of Manipur in the name of Governor issued order No. 6/1(6)/16-H(PLA/RPF) dated 13-07-2017 thereby dismissing the writ petitioner from service with immediate effect by invoking Article 311(2)(c) of the Constitution of India in the interest of the security of the State.

[9] As aggrieved, the writ petitioner, by filing W.P.(C) No. 591 of 2017, challenged the dismissal order dated 13-07-2017. The State also contested the writ petition by filing affidavit-in-opposition. The Ld. Single Judge after hearing the parties was pleased to pass the impugned Judgment and Order dated 27-01-2020 thereby allowing the writ petition by setting aside the dismissal order dated 13-07-2017 and directed to reinstate the writ petitioner into service and the period from dismissal to reinstatement shall be considered as period rendered in service for the purpose of pensionary benefit. The dismissal order dated 13.07.2017 is extracted below:

"GOVERNMENT OF MANIPUR
HOME DEPARTMENT

ORDERS BY THE GOVENOR MANIPUR
Imphal, the 13th July, 2017

No.6/1(6)/16-H(PLA)/RPF): Whereas,the Governor of Manipur is satisfied under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution that in that interest of the security of the State it is not expedient to hold

an inquiry in the case of involvement and association with subversive activities of Shri L. Sushil Singh, Sub-Inspector, (CID/SB), Manipur;

2. And whereas, the Governor of Manipur is satisfied that, on the basis of the information available, the activities of Shri L. Sushil Singh are such as to warrant his dismissal from service;

3. Accordingly, the Governor of Manipur hereby dismisses Shri L. Sushil Singh, Sub-Inspector, (CID/SB), Manipur from service with immediate effect.

By orders & in the name of Governor
Sd/-
(Pautinlam Gangte)
Under Secretary (Home)
Government of Manipur"

Article 311 of the Constitution of India reads 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 an 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 head 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 is 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 interest 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."

It is crystal clear the procedural safeguards provided under clause (2) of Article 311 shall not be applicable in the cases provided under clauses (a), (b) & (c) of the second proviso to Article 311(2) of the Constitution of India.

[10] The operative portions of the impugned judgment and order dated 27.01.2020 passed in W.P.(C) No. 591 of 2017 are reproduced herein below:

"[31] In view of the fact that no material had been placed by the respondent State to satisfy the Court that the impugned dismissal order was passed in security interest, this Court is of the opinion that the impugned order cannot be sustained in the eye of law and also on the ground that already

departmental proceedings as well as criminal prosecution are stated to be pending against the petitioner. For the foregoing discussion, the impugned order is liable to be set aside.

[32] Accordingly,

(a) the writ petition is allowed and the order of dismissal dated 13.07.2017 passed by the first respondent is set aside;

(b) the respondent authorities are directed to reinstate the petitioner into service and give posting other than the post which he was holding prior to the order of dismissal;

c) the period from the date of dismissal to the date of reinstatement shall be considered as period rendered in service for the purposes of pensioner benefits, if any."

[11] Mr. H. Debendra, learned Deputy Advocate General appearing for the appellants submitted that vide order dated 17.12.2019, the writ petition being W.P.(C) No. 591 of 2017 was allowed and set aside the dismissal order dated 13.07.2017. In setting aside the dismissal order which dismissed the writ petitioner by invoking Article 311(2)(c) of the Constitution of India, the conclusion drawn by the Ld. Single Judge passed in W.P.(C) No. 591 of 2021 are as follows:

"(i) The Governor has to be satisfied personally that in the interest of the security of the State, it was not expedient to hold the enquiry as contemplated under Article 311(2) second proviso, clause (c) of the Constitution of India and such power cannot be delegated to any other authority.

(ii) Further, the Committee of Advisors made necessary recommendation for taking up action under Article 311(2)(c) of the Constitution of India and the Governor merely approved the recommendation made by the Committee, which in fact not in accordance with law contemplated under Article 311(c) of the Constitution of India.

(iii) The Governor had merely approved the recommendation of the Committee of Advisors. Mere expressing approval to the recommendation of the Committee of Advisors is not in accordance with the law.

(iv) The impugned dismissal order cannot be sustained as no material had been placed by the respondent State to satisfy the Court that the impugned dismissal order was passed in security interest and moreover, departmental proceedings as well as criminal prosecution are pending against the petitioner."

[12] Mr. H. Debendra, learned Dy. Advocate General appearing for the appellants submitted that under the Constitutional Law, the satisfaction of the Governor as envisaged in Article 311(2) second proviso, clause (c) of the Constitution is not the personal satisfaction of the Governor, but the satisfaction to be arrived with the aid and advice of the Council of Ministers. The learned Dy. Advocate General referred to the judgment of the Hon'ble Supreme Court passed in ***Shamsher Singh V. Union of India &Ors. [(1974) 2 SCC 831]***. The relevant Para No. 48 of the judgment is extracted below:

"48. The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the

Governor generally exercises all his powers and functions. The decision of any Minister or Officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the Rules of Business is the decision of the President or the Governor."

It is true that the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor; but the satisfaction of the President or Governor is in the constitutional sense in the cabinet system of Government, the satisfaction of his council of ministers on whose advice, the President or Governor exercise his power of function likewise in the case for invocation of Article 311(2)(c) of the Constitution of India, the satisfaction of the Governor is subjective satisfaction, but the subjective satisfaction is to be arrived at on the basis of objective satisfaction of the disciplinary authority based on reliable materials i.e. dossiers, reports, records etc. But, in the instant case, there is no reliable material placed before the disciplinary authority to make the recommendation for invoking Article 311(2)(c) of the Constitution of India.

[13] It has been submitted that as per the Rules of Business or any other provisions of law or under the relevant office memorandum dated 16.08.2008, it is not required for the Governor to put up his personal opinion or reasons for arriving at his subjective satisfaction as contemplated under Article 311(2) second proviso, clause (c) of the Constitution of India. And, it is only when

the Governor disagree with the proposal/recommendation of the Committee of Advisors and proposal of the Hon'ble Chief Minister, that he is to give reasons and not otherwise.

It has also been submitted that after due consideration and examination of the reports, records and dossiers submitted by the Home Department, the Committee of Advisors constituted under the office memorandum dated 16.08.2008 came to the conclusion that the writ petitioner willingly indulged in the activities of the banned unlawful organisation, PLA/RPF which are prejudicial to the security of the State and recommended for dismissal of the petitioner from service by invoking Article 311(2) second proviso, clause (c) of the Constitution, the proposal/recommendation was placed before the Hon'ble Chief Minister and Hon'ble Governor for approval. The Governor being satisfied with the recommendation of Committee of Advisors and proposal of the Chief Minister, approved the recommendation on 24.04.2017. After approval of the Governor, as per rule the Under Secretary (Home), Government of Manipur in the name of the Governor issued the order dated 13.07.2017 dismissing the writ petitioner with immediate effect in the interest of the security of the State.

[14] As directed by us, the appellant/State produced the confidential file containing the recommendation of the Committee of Advisor for dismissing the writ petitioner/respondent by invoking

Article 311 (2) Second Proviso, Clause (c) of the Constitution of India which was verified and vetted by the Home Department, Government of Manipur. We perused the confidential file and on perusal of the same, it was found that in the notes, the Hon'ble Governor put only "may be approved" without expressing its satisfaction to the recommendation made by the disciplinary authority and the materials annexed therein in the confidential file. Mention may be made here that the Governor in this process is the final authority and as such, we are of the opinion that "may be approved" is not a final order/opinion.

For perusal and for convenient's sake, only the secret report consisting of the following documents, on the basis of which, the extreme steps for dismissing the writ petitioner/respondent was taken are extracted herein below:–

(i) The detailed report dated 07.11.2015 written by the SDPO, Imphal West to the SP, Imphal West.

(ii) The letter dated 02.12.2015 written by the SP, CID(SB), Manipur to the Inspector General of Police proposing to move the State Government for dismissing the writ petitioner from service.

(iii) Report submitted by the OC/CDO, Imphal West addressed to the OC, IPS dated 22.10.2015.

(iv) Interrogation statement of the writ petitioner recorded by SDPO, Imphal.

"GOVERNMENT OF MANIPUR

OFFICE OF THE SUB DIVISIONAL POLICE OFFICER, IMPHAL

IMPHAL WEST DISTRICT, MANIPUR

No. 2/SDPO-IMP/2015/637 Imphal, the 7th Nov., 2015.

To

Superintendent of Police,
Imphal West District, Manipur

Sub: Submission of detail report.

Ref.: FIR No. 21(1)2015 IPS U/S. 38(1)UA(P) Act & 5(b) Official Secrets Act.

With reference to Endst. No. 10/13/SP-IW/2015 dated 30/09/2015, I have the honour to submit the following detailed report for favour of kind perusal and necessary action please.

DETAILED REPORT

1. *P.O. : Office of the OC/CDO/Imphal West, Manipur.*
2. *D.O. : 22/01/2015 at @ 12:30 pm.*
3. *D.R. : 22/01/2015 at 2:45 pm.*
4. *Complt. : Insp. P. Sanjoy Singh, OC/Imphal West, Manipur.*
5. *Accused : Laishram Sushil Singh (35) S/o. L. Birrendrakumar Singh of Nagamapal Singjubung Leikai, Imphal West, Manipur.*
6. *Charge : U/S. 38(1)UA(P) Act & 5(b) Official Secrets Act.*
7. *I.O. : A. Ghanashyam Sharma (MPS), SDPO IMPHAL.*

Brief fact of the case:

The brief fact of the case is that on 22/01/20215 at 2:45 pm, the complainant namely Insp. P. Sanjoy Singh, OC/CDO, Imphal West reported to the OC Imphal PS stating that on the same day i.e. 22/01/2015 at 5:00 am, received a specific information that one SI Laishram Sushil Singh (35) S/o, L. Birendrakumar Sharma of Nagamapal Singjubung Leirak, serving as a Sub-Inspector in Manipur Police Department has closed link with Unlawful UG Organisations and is providing vital and secret official information to unlawful organization. Based on the information, a team of CDO/IW was sent to call the said

person at the office of the complainant to inquire about the matter. Then, the said person arrived at @ 6:20 am and he was minutely examined by the complainant.

During examination, he disclosed that he is serving as a Sub-Inspector in CID-Technical Branch of Manipur Police Department and presently posted at Chief Minister's Bungalow at Babupara, whose duty is to monitor CCTV camera installed in and around CM's Bungalow. He further disclosed that he was arrested earlier also and was detained under NSA. During further examination, he disclosed that he has closed link with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the commander of Auxiliary Battalion of PLA/RPF. He disclosed that the attacked on security forces at Machikhul of Chandel by PLA/RPF was conducted under the command of said Sagolsem Bobby @ Ahingcha. He disclosed that he used to communicate with Ahingcha through his mobile Phone No. 9612517847 and 8132818550 with the mobile phone number 9191703131 belonging to Bobby @ Ahingcha. He further disclosed that he has been wilfully communicating secret and vital information to Ahingcha, to further their activities and also helping them in their struggle to secede the State of Manipur from the Union of India and thereby associating himself with the PLA/RPF, compromising and jeopardising the security of the State in particular and the security of the Union of India in general.

So, he was arrested at 12:30 pm of 22/01/2015 at the office of OC/CDO Imphal West and seized the following articles on his production:-

1. *One Mobile Handset – GIONEE having IMEI No. 863404025291600 and 863404026291609.*
2. *Two airtel sim cards which was found containing inside the mobile phone having sim card no. 89911 60300 00421 78205 and 89911 60000 01000 68283.*
3. *One Identify card issued in the name of L. Sushil having no. E-00382.*

The arrested person along with the seized articles was handed over to Imphal Police Station for taking further necessary legal action against him. Hence, the case and investigated into.

During the course of investigation, the accused person was arrested in c/w the case. The complainant was examined, where he fully corroborated with the OE of the case. Visited the P.O. and inspected it very carefully and minutely and also prepared a rough sketch map of the P.O. with proper index. The accused person was remanded into police custody till 05/02/2015.

During police custody, the accused person was interrogated where he fully admitted to have committed the offences charged against him. On interrogation, he disclosed that he was earlier arrested in c/w the case FIR No. 31899)2009 IPS U/s. 25(1-a) Arms Act, and detained under NSA at Sajiwa Jail. The following arms and ammunitions were seized from the undernoted accused person in his first arrest:

1) *One six round revolver of 032 calibre marked as made in USA Call .32.*
2) *Two live rounds of .32 ammunitions.*
3) *One .38 revolver marked as .38 & WSPL made in USA.*
4) *Five live round of .38 ammunition.*
5) *One 9mm pistol with magazine.*
6) *Five live rounds of 9mm ammunition.*

He further disclosed that during his NSA detention at Sajiwa Jail, he had a very close relationship with one S/s. Sergeant, Sagolsem Bobby @ Ahingcha (32) of Kakwa Nameirakpam Leikai, Commander of Auxiliary Battalion of PLA/RPF. The accused person kept on contact with Ahingcha after he was reinstated and posted in watch section of CID(SB), Manipur. He kept on contact/touch with Ahingcha either through mobile phone or Facebook Messenger. He usually contacted Ahingcha from his mobile no. 9612517847 to Ahingcha's mobile no. 9191703131.

Moreover, he had visited Moreh and met members of terrorist organization to further their prejudicial activities. Investigation so far reveals that he is a professional criminal involved in various cases. He further disclosed that he passed out vital and secret information of the Police Department to the said UGs outfit through mobile phone and Facebook Messenger, including the details of the casualties and other related information of MachiKhul Ambush, laid by RPF on the security force on 14/01/2015. Moreover, he admitted that he has disclosed about the VIP/VVIP's movements to the UGs outfit.

During the course of further investigation, requested the concerned authority to provide the Call Detailed Record (CDR) with voice recording and Subscriber Detailed Report (SDR) along with the location of the AIRTEL Mobile numbers – (i) 9612517847 (ii) 8132818550 and BSNL mobile no. 9191703131 respectively and also to furnish the mobile nos. of both the Airtel sim cards No. 89911 50300 00421 78205 and 89911 60000 01000 68283. Accordingly, copy of the CDR of the above mentioned three mobile numbers are provided. However, the SDR, location, voice recording of the above mentioned three mobile nos. of both the Airtel sim cards are still awaited.

On examination of the CDR, it is established that the mobile no. 96125178476 that was seized from the accused person have communicated with the mobile number 9191703131 which belongs to Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the Commander of the Auxiliary Battalion of RPF/PLA.

The investigation of the case is now in good progress.

Further report follows.

Dated/Imphal
The 7th Nov., 2015.

Yours faithfully,
Sd/-
A. Ghanashyam Sharma (MPS)
SDPO/IMPHAL WEST"

"To
The Superintendent of Police
Imphal West District, Manipur

Sub: Humble submission of arrest report in respect of the undernoted arrested person.

Ref.: FIR No. 21(1)2015 IPS U/S 38(1) UA(P)Act & 5(b) Official Secrets Act.

Sir,

With due respect, I have the honour to submit the arrest report in respect of the undernoted arrested person in c/w the above referred case for your kind perusal and necessary action.

The brief fact of the case is that today i.e. 22/01/2015 at 2:45 pm, the complainant namely P. Sanjoy Singh, OC/CDO Imphal West reported to the OC Imphal PS stating that on the same day i.e. 22/01/2015 at @ 5:00 am, received a specific information that one SI Laishram Sushil Singh (35) S/o L. Birendrakumar Singh of Nagamapal Singjubung Leirak, now serving as a Sub-Inspector in Manipur Police Department has closed link with Unlawful UG organizations and is providing vital and secret official information to unlawful organization. Based on the information, a team of CDO/IW was sent to call the undernoted person at the office of the complainant to inquire about the matter. Then, the undernoted person arrived at @ 6:20 am and he was minutely examined by the complainant.

During examination, he disclosed that he is serving as a Sub-Inspector in CID-Technical Branch of Manipur Police Department and presently posted at Chief Minister's Bungalow at Bapupara, whose duty is to monitor CCTV camera installed in and around CM's Bungalow. He further disclosed that he was arrested earlier also and was detained under NSA. During further examination, he disclosed that he has closed link with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the commander of Auxiliary Battalion of PLA/RPF. He disclosed that the attacked on security forces at Machikhul of Chandel by PLA/RPF was conducted under the command of said Sagolsem Bobby @ Ahingcha. He disclosed that he used to communicate with Ahingcha through his mobile phone no. 9612517847 and 8132818550 with the mobile phone number 9191703131 belonging to Bobby @ Ahingcha.

He further disclosed that he has been wilfully communicating secret and vital information to Ahingcha, to further their activities and also helping them in their struggle to secede the state of Manipur from the Union of India and thereby associating himself with the PLA/RPF, compromising and jeopardising the security of the state in particular and the security of the Union of India in general.

So, he was arrested at 12:30 pm of 22/01/2015 at the office of OC/CDO Imphal West and seized the following articles from his production:-

1. *One Mobile Hand – GOENEE having IMEI NO. 863404025291600 and 863404026291609.*
2. *Two airtel sim cards with was found containing inside the mobile phone having sim card No. 89911 60300 00421 78205 and 89911 60000 01000 68283.*
3. *One identity card issued in the name of L. Sushil Singh having no. E-00382.*

The arrested person along with the seized articles was handed over to Imphal Police Station for further necessary legal action against him. Hence the case and investigated into.

The undernoted accused person was arrested in c/w the above referred case today i.e. 22/01/2015 and he was interrogated briefly and on his interrogation, he admitted to have committed the offence charged against him. He will be produced before the court of Hon'ble CJM/IW, tomorrow i.e. 23/01/2015 for remanding him in the police custody.

Since the arrested accused person is a Government servant, serving in the Police Department, as S.I. and presently posted at CID Technical Branch, the arrest report is hereby submitted for kind perusal and necessary action please.

Particulars of the arrested accd person:
1. Laishram Sushil Singh (35)
S/o. L. Birendrakumar Singh
Of Nagamapal Singjubung Leirak
Imphal West, Manipur.

Dated/Imphal
The 22nd Jan., 2015

Yours faithfully,
Sd/-
(A. Ghanashyam Sharma), MPS
SDPO/IMPHAL"

[15] Seen the documents mentioned above and the writing/opinion expressed by the disciplinary authority in the notes of the confidential file for dismissal of the writ petitioner/respondent from service under Article 311(2)(c) of the Constitution of India. The letter written by the SP (CID), Manipur, Imphal to the Inspector General of Police, Manipur, in that it was mentioned that the writ petitioner/respondent while posted at CID, Technical Branch was arrested by OC/CDO, Imphal West on 22.01.2015 for his involvement in unlawful activities under FIR No. 21(1)2015 u/s 38(1) UA(P) Act and 5(b) Official Secret Act. Thereafter, the writ petitioner/respondent was placed under suspension for his grave misconduct, dereliction of duty and involvement in the activities of unlawful organisation and for close link with unlawful UG organisation with one, Sagolsem Bobby @ Ahingcha, Commander of Auxiliary Battalion of PLA/RPF. It was, further, mentioned that the gravity of the crime is such that its impact is damaging to the discipline and moral of the forces, if such activities are not stopped

in an exemplary manner, it may set up precedent on the other police personnel to indulge in such activities, and therefore, recommending to be dismissed from service under Article 311 of the Constitution. In the detailed report of the arrest of the writ petitioner/respondent written by SDPO, Imphal West to the SP, Imphal West, some of the relevant portions of the report are reproduced herein below:

Reference is made to the reproduced report at Para No. 14.

> *"So, he was arrested at 12:30 pm of 22/01/2015 at the office of OC/CDO Imphal West .....*
>
> *.....*
>
> *On examination of the CDR, it is established that the mobile no. 9612517847 that was seized from the accused person have communicated with the mobile number 9191703131 which belongs to Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the Commander of the Auxiliary Battalion of RPF/PLA."*

[16] The contents of the allegation made herein above are the grounds for the dismissal of the writ petitioner/respondent. Throughout the correspondence made from the SDPO (supra) to the notes placed before the Committee of Advisors, thereafter the Committee of Advisors after going through the file recommended for dismissing the writ petitioner/respondent from service by resorting to Article 311(2)(c) of the Constitution of India, the Committee's recommendation along with material placed before them was placed

before the Hon'ble Chief Minister and finally to the Hon'ble Governor. The Hon'ble Governor, while putting up the file, gave approval by putting "may be approved", for taking the extreme action for dismissal of the writ petitioner/respondent by taking recourse to Article 311(2)(c) of the Constitution.

[17] The minutes of the meeting of the Committee of Advisors held on 24.04.2017 at 11:00 a.m. are extracted hereunder:

> *"1. .....*
>
> *2. The Committee of Advisors examined the Home Department "Note for Committee of Advisers containing proposal regarding dismissal of Sub-Inspector L. Sushil Singh (35) S/o L. Birendrakumar Singh of Nagamapal Singjubung Leikai under Article 311(2)(c) of the Constitution of India" for his involvement in subversive activities.*
>
> *3. The Committee noted that as per the Secret Report of the Manipur Police Department vide letter No. 5/3/2015-INT/606 dated 5/12/2015, Sub-Inspector L. Sushil Singh was arrested on 22/01/2016 for his involvement in pre-judicial activities and a regular case under FIR No. 21(1)2015 U/s 38(1) UA(P) Act and 5(b) Official Secret Act was registered against him. He has had close link with one Sagolsem Bobby @ Ahingcha of Kakwa Nameirakpam Leikai, the Commander of Auxiliary Battalion of PLA/RPF. He provided secret and vital official information to Ahingcha. He is apparently involved in unlawful organisation (PLA/RPF) with an ulterior motive and to wage against the Government, thereby indulging in criminal activities.*
>
> *4. S.I. L. Sushil Singh was also earlier arrested in connection with FIR No. 318(9)2009 IPS U/S 25(1-A) Arms Act and detained under NSA at Sajiwa Jail. The following arms and ammunities were seized from him :-*
>
> *i. 1 six round revolver of .32 calibre marked as "Made in USA Call .32."*
> *ii. 2 live rounds of .32 ammn.*
> *iii. 5 live round of .38 ammn.*
> *iv. 1 9mm pistol with magazine and*
> *v. 5 live round of 9mm ammn.*

5. Moreover, he had visited Moreh and met members of terrorist organization to further their prejudicial activities. Investigation so far reveals that he is a professional criminal involved in various cases. He admitted that he disclosed about VIP/VVIP's movement to the UGs outfit."

and thereafter, taken a decision at para Nos. 6 to 9 and the same are extracted hereunder:

"6. That the gravity of the crime is such that its impact is debasing to the discipline moral of the forces and promoting insecurity among the public and posing the immediate threat to the security of the Department as well as to the State. If such activities are stopped in an exemplary manner, it may set a precedent on the other police personnel not to indulge in such activities.

7. His continuation in service may threat to the security of the State and appropriate steps may be taken up to dismiss SI L. Sushil Singh of CID(SB) under Article 311(2)(c) of the Constitution for his involvement with unlawful organisations and engagement in subversive activities, without holding Department enquiry as it is not expedient to conduct Departmental enquiry in the interest of the security of the State.

8. The Committee after considering all the details placed before it regarding the activities of L. Sushil Singh, Sub-Inspector of CID(SB) Branch is satisfied that the accused official has willingly indulged in the activities of an organisation declared unlawful which are prejudicial to the security of the State. As such, it is considered not advisable to disclose the allegations against him or to call upon replies thereto.

9. The Committee Advisers, therefore, decided to recommend dismissal of L. Sushil Singh, Sub-Inspector of CID(SB) from service under Article 311(2)(c) of the Constitution of India as it is not expedient to hold Departmental Enquiry in the interest of security of the State as the prejudicial activities are affecting the security of the State."

[18] The relevant operative portion of the statement of the writ petitioner/respondent recorded by the I.O. of the case dated 24.01.2015 is extracted herein below:

"While in the Manipur Central Jail Sajiwa, I became familiar with one UTP namely Sagolsem Bobby @ Ahingcha @ Roi of Kwakeithel Nameirakpam, Leikai, S/S Sgt., now

Commander of the Auxiliary Battalion of PLA. During those days Shri S. Bobby @ Ahingcha requested me to help in their struggle to secede the State of Manipur from the Union of India after release from the jail. As such, I gave consent to help them in future as I was deeply rooted in the approaching struggle to secede the State of Manipur from the Union of India by waging war against the Government. Since the third week of December, 2014, I frequently communicated with Shri S. Bobby Singh @ Ahingcha through internet social networking (Facebook). Later we have exchanged our mobile numbers and started to pass on secret and vital information to Ahingcha for carrying out further activities. I contacted from mobile nos. 9612517847 & 8132818550 with Shri S. Bobby @ Ahinghcha under his no. 9191703131 saved as code name Sagolsem Rointa. Over and above, I passed on information about the movement of security forces, places of Counter insurgency operations to be carried out by the security forces, top secret official information more related to PLA/RPF organisation etc. I carried out similar task till my arrest."

On perusal of the steps taken by the State Government from the date of arrest of the writ petitioner/respondent till his dismissal from service by invoking Article 311(2)(c), it is seen and evident that the writ petitioner/respondent was arrested on 22.01.2015 placed under suspension on 24.01.2015 and after one year, initiated departmental inquiry vide order dated 22.02.2016. The inquiry officer and presenting officer were appointed vide orders dated 22.02.2016 and 27.02.2016. The writ petitioner participated in the departmental inquiry and after receiving signal dated 19.09.2016 and 19.11.2016, the writ petitioner submitted written argument to the inquiry authority on 05.12.2016.The writ petitioner submitted representation dated 04.05.2017 seeking for reinstatement on the

ground that more than 2 (two) years [two and half years] have passed. In the midst of that, the State Government issued dismissal order dated 13.07.2017 by invoking Article 311(2)(c) of the Constitution. In the detailed report of the SDPO, Imphal West proposing to take steps for dismissal of the writ petitioner/respondent, some of the relevant portions are extracted herein above.

[19] On perusal of the above extracted minutes of the meeting of the Committee of Advisors, it is seen that the Committee's resolution was taken on the basis of the secret report of Manipur Police Department at Para No. 3 and on that basis, the Committee formed their opinion on Para No. 6 to 9 and recommended to take recourse to Article 311(2)(c) of Constitution of India for dismissal of the writ petitioner/respondent from service. On this recommendation and secret report as extracted above of the Police Department, the Hon'ble Governor has written in the note "may be approved".

[20] On further perusal of the above extracted Para No. 3, we are of the view that the disciplinary authority failed to mention the exact involvement of the writ petitioner in prejudicial activities and involvement of the writ petitioner/respondent in unlawful activities with the unlawful organization (PLA/RPF) with an ulterior motive to wage war against the Government and indulgence of the

writ petitioner in criminal activities and failed to establish that he has closely worked with one Sagolsem Bobby @ Ahingcha, Kakwa Nameirakpam Leikai, the Commander of Auxiliary Battalion of PLA/RPF and his providing secret and vital information to the said Ahingcha.

From perusal of the whole sequence of the developments from the registration of FIR to the culmination in writ petitioner's dismissal under Article 311(2)(c) of the Constitution of India, it comes out clearly that the view of the disciplinary authority swung from one extreme to another extreme. The reasons/grounds for resorting to such extraordinary step of dismissal, by practically forgoing the laid down procedure, are solely based on the internally generated report i.e. FIR report and the statements extracted from the writ petitioner/respondent, during the police custody with no apparent further efforts made by the police to corroborate the said report and statement. Whatever mentioned as the ground for taking extreme step for dismissing the writ petitioner are just an allegation which was alleged by the investigating authority during the investigation and the internally generated report.

> *23. In Kuldip Singh v. State of Punjab, the Hon'ble Supreme Court held that : (SCC pp 662-63, para 7)*
>
> *"7. At our direction made on 22-4-1996 in this matter, the learned counsel for the State has produced the original record relating to the appellant's dismissal along with translated copies of the relevant document placed before us by the learned counsel for the State is the copy of*

> *FIR No. 219 of 1990 dated 24-11-1990. It is based upon the statement of Head Constable Hardev Singh, who was posted as gunman with Shri Harjit Singh, Superintendent of Police (SP) (Operations). The FIR speaks of the jeep (in which the said SP was travelling along with certain police personnel) being blown up killing the said SP and few other police officials. The next document placed before us is the case diary pertaining to the said crime containing the statement of the appellant, Kuldip Singh. In his statement, Kuldip Singh did clearly state about his association with certain named militants, the plot laid by them to kill Shri Harjit Singh, Superintendent of Police, Tarn Taran by placing a bomb and the manner in which they carried out the said plot. He also stated that he and his militant companions planned to plant a bomb in the office of SSP, Tarn Taran but that the police officers came to know of the said plan, thus foiling their plan. The learned counsel for the State of Punjab did concede that except the aforesaid statement of admission/confession of the appellant, there was no other material on which the appellant could be held guilty of conduct warranting dismissal from service.*

Accordingly, we are of the considered view that there were no reliable material before the Committee of Advisors to arrive at their satisfaction that the writ petitioner has willingly indulged in the activities of an organization declared unlawful which are prejudicial to the security of the State and as such, we cannot give our approval to his subsequent dismissal under Article 311(2)(c) of the Constitution of India.

[21] We are also unable to agree with the Hon'ble Governor giving his/her assent by just writing "may be approved" without expressing subjective satisfaction to the recommendation of the disciplinary authority which is against the ***dicta*** of the Hon'ble

Supreme Court. Article 311(2)(c) of Constitution being the special provision for resorting to this extreme step, extra care is to be taken in taking this extreme step under Article 311(2)(c) of Constitution of India. This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and order of penalty following thereupon would both be void and unconstitutional. The Article 311(2)(c) of Constitution in itself says that no person who is a member of Civil Service of Union of India or all India service or Civil Service of a State shall be dismissed or removed without giving a reasonable opportunity of being heard of the charges. In the present case, the authority dismissed the writ petitioner under Article 311(2)(c) of Constitution of India of which, the same is reproduced herein again for convenient sake:

> *"(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."*

The Hon'ble Supreme Court in the case of ***Southern Railways*** at Para No.19 observed as thus:

> *"19. The second proviso appended to Article 311, however, makes three exceptions in regard to constitutional requirement to hold an inquiry, clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such inquiry, subject of course to the condition that reasons therefor are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by*

the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity."

[22] From the foregoing observation made by us, we are of the view that the disciplinary authority failed to put up reliable materials before the Hon'ble Governor for arriving at his subjective satisfaction for giving his approval and that the disciplinary authority also failed to mention the departmental inquiry which was ensued more than 1 (one) year after the registration of FIR and the stage of the inquiry where the writ petitioner/respondent already submitted his written argument. The authority failed to clarify and convince the Hon'ble Governor that in spite of holding departmental inquiry for a quite long time and it is not expedient for them to hold further inquiry, concealment of this fact alone is the commission of malafide on the part of the disciplinary authority.

The Hon'ble Supreme Court in the case of ***Union of India v. Tulsiram Patel*** at para Nos. 130, 133 & 134 held as under:

"130. ..... 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 court will strike down the order dispensing with the inquiry as also the order imposing penalty.

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 the void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It should, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry."

24. This Court in Union of India v. R. Reddappa held as under: (SCC p. 274, para 5)

"5. More than a decade has gone by since these employees were dismissed for participating in strike called by the Union recognised by the Railways.

.... We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the Rule then

> *the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation.*

[23] The learned Deputy Advocate General, further, submits that the Call Detail Records (CDR) and other incriminating materials on record against the writ petitioner/respondent are sufficient to arrive at the **subjective satisfaction** of the authority that it was not expedient to hold enquiry for dismissing the writ petitioner / respondent and it is not for the Court to examine the adequacy or otherwise of materials with which the Governor arrived at his subjective satisfaction that it was not expedient to hold an enquiry in the interest of the security of the State.

As observed earlier by us, the authority failed to convince / exhibit the criteria laid down in the provision as well as the ***dicta*** laid down by the Hon'ble Supreme Court that the authority put up the incriminating materials on record for objective satisfaction and for subsequent subjective approval of the Hon'ble Governor.

The relevant portion of the minutes of the meeting of the Committee of Advisors is hereunder extracted -

> *"6. That the gravity of the crime is such that its impact is debasing to the discipline moral of the forces and promoting insecurity among the public and posing the immediate threat to the security of the Department as well as to the State. If such activities are stopped in an exemplary manner, it may set a precedent on the other police personnel not to indulge in such activities.*
>
> *7. His continuation in service may threat to the security of the State and appropriate steps may be taken up to dismiss SI L. Sushil Singh of CID(SB) under Article 311(2)(c) of the Constitution for his involvement with unlawful organisations and engagement in subversive activities, without holding Department enquiry as it is not expedient to conduct Departmental enquiry in the interest of the security of the State.*
>
> *8. The Committee after considering all the details placed before it regarding the activities of L. Sushil Singh, Sub-Inspector of CID(SB) Branch is satisfied that the accused official has willingly indulged in the activities of an organisation declared unlawful which are prejudicial to the security of the State. As such, it is considered not advisable to disclose the allegations against him or to call upon replies thereto.*
>
> *9. The Committee Advisers, therefore, decided to recommend dismissal of L. Sushil Singh, Sub-Inspector of CID(SB) from service under Article 311(2)(c) of the Constitution of India as it is not expedient to hold Departmental Enquiry in the interest of security of the State as the prejudicial activities are affecting the security of the State."*

The relevant portion of the office memorandum dated 11.11.1985 at Para No. 9 of the office memorandum is extracted herein below:

> *"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 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 is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."

[24] It is settled principle of law that the decision/proposal of the disciplinary authority for dismissal of the writ petitioner/respondent under Article 311(2)(c) of the Constitution of India should be objective satisfaction basing on sufficient materials of fact and law in the present case, we are of the view that this criteria is not fulfilled by the disciplinary authority.

As observed earlier by us, the objective satisfaction of the disciplinary authority were not as per the provision as well as the dicta of the Hon'ble Supreme Court and as such, we are not agreeable to the submission that the satisfaction was based on sufficient materials of fact and law. Accordingly, we are of the considered view that the recommendation of the disciplinary authority for invoking Article 311(2)(c) of the Constitution of India and the subsequent approval of the Governor are malafide.

[25] The learned Deputy Advocate General submits that the decision taken for dismissing the writ petitioner/respondent under Article 311(2)(c) is not subjected to judicial review as there was no malafide or extraneous consideration as in ***Tulsiram Patel's case (1985) 3 SCC 398****[Para No. 142],* the Hon'ble Supreme Court has observed that –

> *"142. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State; it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word 'inexpedient' as meaning "not expedient' disadvantageous in the circumstances,*

unadvisable, impolite". The same dictionary defines 'expedient' as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case". Webster's Third New International Dictionary also defines the terms 'expedient' as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances". It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public."

[26] However, in the instant case, it is to be mentioned that suspension order was issued on 24.01.2015 and the memorandum dated 22.02.2016 was issued on 22.02.2016 for departmental

inquiry against the writ petitioner i.e. after the lapse of 1 (one) year of his suspension, vide orders dated 22.02.2016 and 27.02.2016, the inquiry officer and presenting officer were appointed respectively. Written statement of defence was submitted on 03.03.2016 and the supplementary written statement of defence was also submitted on 12.09.2016. The writ petitioner appeared before the Presiding Officer of the DE and the written argument to the inquiry authority was submitted on 05.12.2016. The dismissal from service by invoking Article 311(2)(c) of the Constitution of India was issued on 13.07.2017.

[27] In the facts and circumstances, we are not inclined to agree with the submission made above by the learned counsel appearing for the appellant that it is not expedient to hold inquiry and the authority has taken the decision to dismiss the writ petitioner/respondent from service by invoking Article 311(2)(c) of the Constitution.

We are of the considered view that the information received/submitted is/are not reliable enough to come to the satisfaction that it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State.

In this regard the Hon'ble Supreme Court in ***Tulsiram Patel's case (1985) 3 SCC 398***observed at para No. 130, 133 & 134:

> *"130. ..... 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.*
>
> *133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*
>
> *134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the*

requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry."

The Hon'ble Supreme Court in the case of ***Southern Railways*** at Para No.19 observed as thus:

"19. The second proviso appended to Article 311, however, makes three exceptions in regard to constitutional requirement to hold an inquiry, clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such inquiry, subject of course to the condition that reasons therefor are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity."

Further, the Hon'ble Supreme Court in ***Southern Railway Officers' Assn. V. Union of India &Ors. [(2009) 9 SCC 24]*** observed at Para No. 22, 23, 24, 25 & 26 that –

"22. In Satyavir Singh v. Union of India, this Court held : (SCC p. 288, para 21)

"21. The point which was next urged in support of the contention that the impugned orders were passed mala fide was that even though co-workers may not have been available as witnesses, there were policemen and police officers posted inside and outside the building and they were available to give evidence and that superior officers were also available to give evidence. The crucial and material evidence against the appellants would be that of their co-workers for these co-workers were directly concerned in and were eyewitnesses to the various incidents. Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be

available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable. The affidavit filed by the Joint Director, Research and Analysis Wing, Cabinet Secretariat, Hari NarianKak, who had passed the impugned orders, sets out in detail the various acts of intimidation, violence and incitement committed by each of the appellants. Copies of the written reasons for dispensing with the inquiry in the case of the appellants have also been annexed to the said affidavit. It is clear from a perusal of the said affidavit and its annexures that the police officers, policemen and senior officers could not have possibly given evidence with respect to all these acts. The said affidavit further states that the senior officers were also intimated and were threatened with dire consequences if they gave evidence. Further, grievances were made against the senior officers of the RAW in the said charter of demands submitted by the said Association and the evidence of senior officers would have been attacked as being biased and partisan. There is thus no substance in this point also."

23. *In Kuldip Singh v. State of Punjab, this Court held: (SCC pp 662-63, para 7)*

> *"7. At our direction made on 22-4-1996 in this matter, the learned counsel for the State has produced the original record relating to the appellant's dismissal along with translated copies of the relevant document placed before us by the learned counsel for the State is the copy of FIR No. 219 of 1990 dated 24-11-1990. It is based upon the statement of Head Constable Hardev Singh, who was posted as gunman with Shri Harjit Singh, Superintendent of Police (SP) (Operations). The FIR speaks of the jeep (in which the said SP was travelling along with certain police personnel) being blown up killing the said SP and few other police officials. The next document placed before us is the case diary pertaining to the said crime containing the statement of the appellant, Kuldip Singh. In his statement, Kuldip Singh*

did clearly state about his association with certain named militants, the plot laid by them to kill Shri Harjit Singh, Superintendent of Police, Tarn Taran by placing a bomb and the manner in which they carried out the said plot. He also stated that he and his militant companions planned to plant a bomb in the office of SSP, Tarn Taran but that the police officers came to know of the said plan, thus foiling their plan. The learned counsel for the State of Punjab did concede that except the aforesaid statement of admission/confession of the appellant, there was no other material on which the appellant could be held guilty of conduct warranting dismissal from service.

24. This Court in Union of India v. R. Reddappa held as under: (SCC p. 274, para 5)

"5. More than a decade has gone by since these employees were dismissed for participating in strike called by the Union recognised by the Railways.

.... We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the Rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable

as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation.

25. In Indian Railway Construction Co. Ltd. V. Ajay Kumar, this Court held: (SCC p. 588, para 12)

"12. It is fairly well settled that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry.

26. The law laid down by this Court being clear and explicit, the question which would arise for our consideration is whether in then prevailing situation, what a reasonable man taking a reasonable view would have done."

[28] The learned Deputy Advocate General, further, submitted that the Hon'ble Supreme Court held that while examining an order issued for dismissing a person by invoking clause (c) to second proviso to clause (2) of Article 311 of the Constitution, the Court cannot look into the sufficiency or correctness of materials are also about the relevancy as long as some materials are found relevant which forms the subjective

satisfaction. The Hon'ble Supreme Court in ***Union of India &Anr. v. Balbir Singh &Ors. [(1998) 5 SCC 216] (Para No. 7)***, observed that -

> *"7. In the case of A.K. Kaul v. Union of India this Court has examined the extent of Judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution. This Court has held that the satisfaction of the President can be examined within the limits laid down in S.R. Bomai v. Union of India. The order of the President can be examined to ascertain whether it is vitiated either by mala fides or is based on wholly extraneous and / or irrelevant grounds. The court, however, cannot sit in appeal over the order, or substitute its own satisfaction for the satisfaction of the President. So long as there is material before the President which is relevant for arriving at his satisfaction as to the Court would be bound by the order so passed. This Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has said, (1) that the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/o irrelevant grounds; (2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action; (3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President; (4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power, (5) the could will not lightly presume abuse or misuse of power and will make allowance for the fact that the president and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter; (6) this does not mean that the President and the Council of Ministers are the final arbiters in the matter o that their opinion is conclusive; (cf. also Union of Territory, Chandigarh v. Mohinder Singh)."*

In ***A.K. Kaul & Anr. v. Union of India &Anr.*** ***[(1995) 4 SCC 73]****(Para No. 21),*the Hon'ble Supreme Court observed that –

> *"21. It would thus appear that in S.R. Bommai though all the learned Judges have held that the exercise of power under Article 356 (1) is subject to judicial review but in the matter of justiciability of the satisfaction of the President, the view of the majority (Pandian, Ahmadi, Verma, Agrawal, Yogeshwar Dayal and Jeevan Reddy, JJ) is that the principles evolved in Barium Chemicals for adjudging the validity of an action based on the subjective satisfaction of the authority created by statute do not, in their entirety, apply to the exercise of a constitutional power under Article 356. On the basis of the judgment of Jeevan Reddy, J., which takes a narrower view than that taken by Sawant, J., it can be said that the view of the majority (Pandian, Kuldip Singh, Sawant, Agrawal and Jeevan Reddy, JJ.) is that:*
>
> *(i) the satisfaction of the President while making a proclamation under Article 356(1) is justiciable;*
> *(ii) it would be open to challenge on the ground of mala fides or being based wholly on extraneous and / or irrelevant grounds;*
> *(iii) even if some of the materials on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;*
> *(iv) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;*
> *(v) the ground of mala fides takes in inter alia situations where the Proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power;*
> *(vi) the court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President can the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and that the Constitution has trusted their judgment in the matter; and*

(vii) this does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive."

But, in both, the Hon'ble Supreme Court observed that the scope of judicial review of the President's satisfaction for passing an order under (c) of the second proviso to Article 311(2) in following terms:

> "*(1) that the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/o irrelevant grounds;*
>
> *(2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action;*
>
> *(3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President;*
>
> *(4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power;*
>
> *(5) the court will not lightly presume abuse or misuse of power and will make allowance for the fact that the president and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter;*
>
> *(6) this does not mean that the President and the Council of Ministers are the final arbiters in the matter o that their opinion is conclusive; (cf. also Union of Territory, Chandigarh v. Mohinder Singh)."*

Accordingly, in the facts and circumstances of the present case, we are of the view that the present case comes under the purview of the above 6 (six) terms.

[29] As observed earlier by us, the materials placed before the authority are not relevant/reliable enough for the conclusion that there is no expediency to conduct inquiry.

[30] It is true that as per the Hon'ble Supreme Court's observation (supra), the Court cannot look into the sufficiency or correctness of materials which are also about the relevancy as long as some materials are found relevant which forms the subjective satisfaction. However, it is also observed by the Hon'ble Supreme Court that it can be examined to ascertain whether it is vitiated either by malafide or is based wholly on extraneous and/or irrelevant grounds and also that it would be open to challenge on the ground of malafide or being based wholly on extraneous and/or irrelevant grounds.

[31] On going through the confidential file placed before us, the only ground put up by the reporting authority as reproduced above are only allegations which were found emerged during criminal investigation of the FIR case. On further perusal of the confidential file as well as facts asserted by the parties, the appellant failed to specifically mention about the conducts and activities of the writ petitioner/respondent for dismissal from service by invoking Article 311(2)(c) of the Constitution of India on the ground that due to the prejudicial activities of the writ petitioner were affecting sovereignty and security of the State.

[32] In the present case, the authority registered FIR against the writ petitioner/respondent, put under suspension, Departmental inquiry was conducted and the writ petitioner submitted written argument. Mention is made here that the time consumed from the registration of FIR till the issuance of the dismissal order was almost two and half years. In the midst of this period of two and half years, the authority failed to mention/report of the further commission of prejudicial activities causing the interest of the security of the State; but without any specific reason (fresh prejudicial activities) other than the of the offences alleged in the above mentioned report. In this factual position, we are not inclined to agree with the submission made above by the learned counsel for the writ appellant that in the interest of the security of the State, it is not expedient to hold an inquiry in the case of involvement and association with subversive activities of the writ petitioner.

[33] Further, on perusal of the dismissal order dated 13.07.2017 issued in the name of Governor at para No. 1 which reads as follows:

> *"Whereas, the Governor of Manipur is satisfied under sub-clause(c) of the proviso to clause (2) of Article 311 of the Constitution that in that interest of the security of the State it is not expedient to hold an inquiry in the case of involvement and association with subversive activities of Shri L. Sushil Singh, Sub-Inspector (CID/SB), Manipur."*

[34] In this order itself, it is mentioned that "in the interest of the security of the State it is not expedient to hold an inquiry in the case of involvement and association with subversive activities". In the light of our observation made above, this order itself is contrary to the steps taken as mentioned above by the authority because, the SP (CID/SB), Manipur, Imphal issued an office memorandum dated 22.02.2016 for conducting departmental inquiry against the writ petitioner/respondent and calling upon the writ petitioner/respondent to submit written statement of his defence. It is evident without any doubt that the departmental inquiry was started way back in the month of February, 2016.But, the dismissal of the writ petitioner from service by invoking Article 311(2)(c) of the Constitution of India was issued only on 13.07.2017. The said office memorandum is extracted herein below:

> *"Imphal, the 22nd February, 2016*
>
> *MEMORANDUM*
>
> *Sub-Inspector L. Sushil Sigh is hereby informed that it is proposed to hold an inquiry against him under Rule 66-Part - III of Assam Police Manual. The allegation on which the enquiry is proposed to be held are set out in the enclosed statement of allegations and the charges framed on the basis of the said allegations are specified in the enclosed statement of charges.*
>
> *2. Sub-Inspect L. Sushil Singh is hereby required to submit to the undersigned a written statement of his defence not later than 3/03/2016 and also:*
>
> *(i) to state whether he desires to be heard in person;*
>
> *(ii) to furnish the names and addresses of the witnesses, if any, whom he wish to call in support of his defence and*

(iii) to furnish a list of documents, if any, which he wish to produce in support of his defence.

3. Sub-Inspect L. Sushil Singh is further informed that if for the purpose of preparing his defence he wishes to inspect and to take extract from any official records, he should furnish a list of such records to the undersigned such records are not relevant for the purpose or it is against the public interest to allow him access to such records, he will not be permitted to inspect or take extracts from such records.

4. Sub-Inspect L. Sushil Sigh is further informed that if written statement of his defence is not received on or before the date specified above the inquiry is liable to be held ex-parte.

5. The attention of Sub-Inspect L. Sushil Singh is initiated to Rules 20 of the Central Civil Services (Conduct) Rules, 1964 which no Govt. servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matter pertaining to his service under the Govt. If any representation is received on his behalf from any other person in respect of any matter dealt with this proceeding it will be presumed Sub-Inspector L. Sushil Singh is aware of such representation that it has been made at his instance and action will be taken against him for violation of Rule 20 of these Rules.

6. The receipt of this memorandum may be acknowledged.

Sd/-
Superintendent of Police/CID(SB)
Manipur, Imphal"

In the instant case, it is to be mentioned that suspension order was issued on 24.01.2015 and the memorandum dated 22.02.2016 was issued on 22.02.2016 for departmental inquiry against the writ petitioner i.e. after the lapse of 1 (one) year of his suspension vide orders dated 22.02.2016 and 27.02.2016. The inquiry officer and presenting officer were appointed respectively. Written statement of defence was submitted on

03.03.2016 and the supplementary written statement of defence was also submitted on 12.09.2016. The writ petitioner appeared before the Presiding Officer of the DE and the written argument to the inquiry authority was submitted on 05.12.2016. The dismissal from service by invoking Article 311(2)(c) of the Constitution of India was issued on 13.07.2017.

On considering these facts, we are not inclined to agree with the grounds made in the dismissal order dated 13.07.2017.

[35] The office memorandum dated 11.11.1985 issued by Director, Government of India/Bharat Sarkar, Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension (Department of Personnel and Training, New Delhi) which was issued in compliance to the Hon'ble Supreme Court's order passed in Civil Appeal No. 6814 of 1983, Civil Appeal No. 3484 of 1982 delivered on 11.07.1985 regarding the scope of second proviso to Article 311(2) of the Constitution of India ***(Tulsiram Patel & Ors.)*** and in the subsequent judgment of the Hon'ble Supreme Court delivered on 12.09.1985 in the case of ***Satyavir Singh & Ors.*** (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982) makes it imperative to clarify the issue for the benefit and guidance for all concerned. The relevant para of the office memorandum is reproduced herein below:

"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.

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."

At para No. 2 of the office memorandum, it was mentioned that -

"..... no Government employee can be dismissed, removed, 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 except in the three exceptional situations listed in clause (a), (b) and (c) of the second proviso of Article 311(2) of the Constitution that the requirement of holding inquiry may be dispensed with."

At para No. 3 of the memorandum, it was mentioned that -

"..... the competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind....."

At para No. 6 of the memorandum, it was mentioned that –

"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:-

(ii) 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.

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."

At para No. 9 of the office memorandum, it was mentioned that -

> *"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 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 is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."*

[36] Considering the facts and observations made above by us, we are of the view that the conditions made herein in both para No. 6 and 9 of the office memorandum are not complied

with/fulfilled by the authority in invoking Article 311(2)(c) of the Constitution of India in dismissing the service of the writ petitioner/respondent. Further, in the facts and circumstances as set out by the authority in the present case, the authority failed to convince this Court that during the said more than two years of the pendency of the case/inquiry, the petitioner did not give cooperation to the investigation or there were additional activities committed by the petitioner apart from the activities mentioned in the original report.

[37] Further, we are of the view that the report of the disciplinary authority as well as the decision of the Committee of Advisors and approval given by the Hon'ble Chief Minister as well as the Hon'ble Governor are not in conformity with the guidelines set out in the present office memorandum as well as the observations made by the Hon'ble Supreme Court for contemplating recourse to take decision that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2) or corresponding provisions in the service rule. The satisfaction of the Hon'ble Governor as found in the notes of the confidential file is "may be approved". Even the words satisfied is not used; in this situation, we are of the view that the satisfaction of the Hon'ble Governor had been reached malafide based on wholly extraneous or irrelevant grounds; hence open to judicial review.

[38] It has further been submitted that the pendency of criminal proceeding/Departmental proceeding is different aspect and it does not debar the State in taking action under Article 311(2) of the Constitution of India. As such, there is no infirmity in the order dated 13.07.2017 dismissing the writ petitioner/respondent from service in the interest of the security of the State by invoking Article 311(2)(c) of the Constitution of India. Further, in ***Union of India & Ors. V. Major SP Sharma & Ors. [(2014) 6 SCC 351] (Para No. 69),*** the Hon'ble Supreme Court held that -

> *"69. Indisputably, defence personnel fall under the category where the President has absolute pleasure to discontinue the services. Further, in our considered opinion as far as security is concerned, the safeguard available to civil servants under Article 311 is not available to defence personnel as judicial review is very limited. In cases where continuance of army officers in service is not practicable for security issue then such officers can be removed under the pleasure of doctrine. As a matter of fact, Section 18 of the Army Act is in consonance with the constitutional powers conferred on the President empowering the President to terminate the services on the basis of material brought to his notice. In such cases, the army officers are not entitled to claim an opportunity of hearing. In our considered opinion the pleasure doctrine can be invoked by the President at any stage of enquiry on being satisfied that continuance of any officer is not in the interest of and security of the State. It is therefore not a camouflage as urged by the respondents."*

[39] The registration of FIR against the writ petitioner was made on 22.01.2015 and the writ petitioner was placed under suspension on 24.01.2015 and after lapse of more than 1 (one) year of the registration of FIR, the memorandum dated 22.02.2016 was issued both for initiating Departmental inquiry, vide orders

dated22.02.2016 and 27.02.2016. The inquiry officer and presenting officer were appointed respectively. Written statement of defence was submitted by the writ petitioner on 03.03.2016 and the supplementary written statement of defence was submitted on 12.09.2016 and in compliance with the inquiry officer, the writ petitioner appeared before the inquiry officer on 19.09.2016 and 19.11.2016, submitted written arguments to the inquiry authority on 05.12.2016 and the order dated 13.07.2017 was issued by invoking Article 311(2)(c) of the Constitution of India dismissing the writ petitioner from service.

[40] Further, the learned Deputy Advocate General submitted that under the Rules of Business of the Government of Manipur framed in exercise of power conferred by clause (2) and (3) of Article 166 of the Constitution, the proposals for awarding punishment of dismissal or removal or compulsory retirement from service invoking the proviso (c) to Article 311(2) of the Constitution has to be submitted by the Chief Minister to the Governor before the issue of the Order, Rule 55(xx). As such, the recommendation of the Committee of Advisors was placed before the Hon'ble Chief Minister for referring to the Governor of Manipur.

[41] As observed above, the contents and materials placed before the Committee of Advisors, Hon'ble Chief Minister and Hon'ble Governor are not enough to come to conclusion that the

case of the writ petitioner is fit to resort to Article 311(2)(c) of the Constitution of India for dismissing the service of the writ petitioner.

[42] The learned Deputy Advocate General referred to the judgment of Hon'ble Supreme Court passed in ***P. Balakotaiah V. Union of India & Ors. (AIR 1958 SC 232)*** wherein it has been observed that –

> *"12(iii) It is next contended by the Mr. Umrigar that the charges which were made against the appellants in Civil Appeal No. 46 of 1956 in the notice dated 6-7-1950, have reference to events which took place prior to the coming into force of the Security Rules, which was on 14-5-1949, and that the order terminating the services of the appellant based thereon is bad as giving retrospective operation to the rules, and that the same is not warranted by the terms thereof. Now, the rules provide that action can be taken under terms, if the employee is engaged in subversive activities. Where an authority has to form an opinion that an employee is likely to be engaged in subversive activities, it can only be as a matter of interference from the course of conduct of the employee, and his antecedents must furnish the best materials for the same. The rules are clearly prospective in that action thereunder is to be taken in respect of subversive activities which either now exist or are likely to be indulged in, in future, that is to say, which are in esse or in posse. That the materials for taking action in the latter case are drawn from the conduct of the employees prior to the enactment of the rules does not render their operation retrospective. Vide the observations of the Lord Denman, C.J., in* ***The Queen V. St. Mary Whitechapel*** *and* ***The Queen V. Chirstchurch****. This contention must also be rejected."*

[43] As observed above, the allegation made against the writ petitioner contained in the confidential file and secret report i.e. from the registration of FIR till the issuance of the dismissal order as narrated above, the disciplinary authority's recommendation for dismissal of the writ petitioner from service by resorting to Article

311(2)(c) of the Constitution of India, the disciplinary authority is not able to show that there is no expediency to conduct departmental inquiry against the writ petitioner.

[44] It has also been submitted by the learned Dy. Advocate General that the dismissal of a Government employee by invoking Article 311(2)(c) of Constitution of India on the recommendation of Committee of Advisors constituted under the office memorandum dated 26.07.1980 of the Central Government in consonance with the office memorandum dated 16.08.2008 of the State Government were subject matter in several cases before the Hon'ble Supreme Court and no decision is found invalidating these office memorandum. In other words, the office memorandum is upheld by the Hon'ble Supreme Court.

The submission made above by the learned Dy. Advocate General is contrary to the laws laid down in the office memorandum.

[45] Mr. K. Roshan, learned counsel appearing for the respondent submitted that vide order dated 24.01.2015, he was placed under suspension and after the lapse of one year, memorandum dated 22.02.2016 was issued for initiating departmental inquiry. Vide orders dated 22.02.2016 and 27.02.2016, the inquiry officer and presenting officer were appointed respectively.

His written statement of defence was submitted on 03.03.2016 and the supplementary written statement of defence was also submitted on 12.09.2016. He appeared before the presenting officer, pursuant to and in compliance with the signal dated 19.09.2016 and 19.11.2016, he submitted his written arguments to the inquiry authority on 05.12.2016. Thereafter, the departmental inquiry came to a standstill and the representation dated 04.05.2017 was submitted seeking for reinstatement on the ground that more than 2 (two) years have passed since the initiation of the departmental inquiry and nothing material has come up except for some bare allegations. However, surprisingly the order dated 13.07.2017 was issued by invoking Article 311(2) second proviso, clause (c) of the Constitution of India.

[46] The learned counsel appearing for the respondent, further, submitted that since the departmental inquiry had already been held and completed with active participation and full co-operation of the respondent, the provisions of the Article 311(2)(c) of the Constitution of India cannot be made applicable in the case of the respondent. As per Article 311(2)(b)(c) of the Constitution of India, inference can be drawn that the decision to dispense with the enquiry has to precede the actual departmental inquiry.

It has also been submitted that in the year 1985, the Departmental of Personnel & Training, Government of India issued an Office Memorandum No. 11012/11/86-Estt(A), dated 11.11.1985 to clarify the issues regarding the scope of second proviso to Article 311(2) of the Constitution of India subsequent to and in consequence of the case of ***Tulsiram Patel &Ors***. The relevant Para No. 6 of the office memorandum is extracted herein below:

> *"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 :-*
>
> *(a) 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 –*
>
> *(b) 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*
>
> *(c) 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*
>
> *(d) 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.*
>
> *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 No. 9 of the office memorandum aforementioned (cited by both parties) is also extracted below:

"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 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 is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."

[47] The respondent had participated in the departmental inquiry which was proceeded against him with his active participation and full co-operation to the disciplinary authorities and had never committed any illegal acts as enumerated in the Para No. 6 of the said office memorandum which would prevent the disciplinary authorities from proceeding with the departmental inquiry. The authorities before dispensing with the inquiry by invoking Article 311(2)(b)(c) have not followed the stipulations as laid down in the said Para No. 6 of the office memorandum illegally and arbitrarily.

[48] In response to the counter affidavit filed by the appellants/State, it has been submitted by the learned counsel appearing for the respondent that the proposal of the Home Department, Government of Manipur, for dismissal of the respondent under Article 311(2)(c) of the Constitution of India for involvement in subversive activities and his association with the

unlawful organization despite being a member of a disciplined police force in the interest of security of the State, placed before the Committee of Advisors, which recommended the proposal for dismissal of the respondent, is mere allegation. During the writ proceeding, the Hon'ble Single Judge did not have the opportunity to peruse the records placed before the Committee of Advisors, but nevertheless in Para No. 18 of the judgment under appeal had stated that the allegations which were levelled against the respondent requires thorough inquiry by way of oral and documental proof. Para No. 18 of the judgment is extracted below:

> *"18. No material has been placed before this Court qua the satisfaction stated in the impugned dismissal order. Nothing on record before the Court to show that the petitioner is closely associated with the Commander of Auxiliary Battalion of PLA/RPF viz., Sagolsem Bobby @ Ahingcha and also he had provided secret and vital official information to the said Ahingcha. The alleged expert report stated in the counter has not been placed before this Court. Moreover, the allegations levelled against the petitioner requires thorough inquiry by way of oral and documental proof."*

But, in the present appeal, as directed by us, the State appellants produced the confidential file before us and perused the contents of the confidential file.

In addition to the Hon'ble Supreme Court's judgments relied by us, we are also relying on the following Hon'ble Supreme Court's judgment in deciding the present case.

In the case of ***Union of India V. MM Sharma [(2011) 11 SCC 293 [Para No. 18],*** the Hon'ble Supreme Court observed that-

> *"18. It should also be pointed out at this stage that sub-clause (b) of the second proviso to Article 311(2) of the Constitution of India mandates that in case* ***the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken. Sub-clause (c) of the second proviso to Article 311(2)*** *on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time, there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the Tribunal. Where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of the security of the State is based on reasons and is not arbitrary. If and when such an order is challenged in the court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the inquiry in the interest of security of the State."*

The Hon'ble Supreme Court held in the case of ***Southern Railway Officers' Association & Anr. V. Union of India &Ors. [(2009) 9 SCC 24 (para No. 19)]*** that –

> *"19. The second proviso appended to Article 311, however, makes three exceptions in regard to constitutional requirement to hold an inquiry, clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such inquiry, subject of course to the condition that reasons therefor are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity."*

[49] In the case of ***Dr. V.R. Sanal Kumar V. Union of India &Ors. [2023 Livelaw (SC) 432, Para No. 24]***, the Hon'ble Supreme Court held that -

> *"24. We have already taken note of the indisputable and undisputed facts obtained in this case which are relevant for the purpose of consideration of the question with respect to the expediency or inexpediency of holding an inquiry "in the interest of the security of the State." In view of the situations deducible from the materials on record, we find absolutely no reason to hold that the satisfaction that it is not expedient to hold an inquiry "in the interest of security of the State" was arrived at without any material. When once it is obvious that circumstances to hold an inquiry "in the interest of the security of the State" to hold an inquiry warrants no further scrutiny, rather, it is not fit to be subjected to further judicial review. In other words, the Court cannot, in such circumstances, judge on the expediency or inexpediency to dispense with the inquiry as it was arrived at based on the subjective satisfaction of the President based on materials. In the above circumstances, we do not find any reason to interfere with the disinclination on the part of the Tribunal and then the High Court, on the aforesaid issue."*

[50] Based on the decisions of the Hon'ble Supreme Court, the learned counsel appearing for the respondent submitted that the recommendation of the Committee of Advisors for dismissal of the respondent from service cannot be said to be **cogent and sufficient based on objectivity.** The Committee of Advisors acted on mere allegations and recommended for dispensing with the departmental inquiry against the respondent and the same suffers from the arbitrariness and it is illegal.

For the sake of convenience, the meaning of cogent, sufficient, satisfaction, objective and subjective as these words are properly and conveniently used in the provision of Article 311(2)(c) of the Constitution of India, as interpreted by the Hon'ble Supreme Court are reproduced herein below:

COGENT MEANING

The term "cogent" means something that is clear, logical, and convincing. When an argument, explanation, or piece of evidence is described as cogent, it means it is well-reasoned and persuasive, making it compelling and easy to understand. For example, a cogent argument in a debate would be one that is both rational and effectively supported by evidence.

COGENT MEANING IN LEGAL TERMS

In legal terms, "cogent" refers to evidence or arguments that are compelling, clear, and logically sound. When evidence is described as cogent, it means that it is strong, relevant, and effectively supports a particular point or claim in a legal case. Similarly, a cogent argument in a legal context would be one that is well-structured, persuasive, and based on sound reasoning and credible evidence. In essence, cogent evidence or arguments are crucial for persuading a judge or jury and for making a strong case in legal proceedings.

SUFFICIANT MEANING

The term "sufficient generally means adequate or enough to meet a particular need or requirement. In different contexts, it can have specific meanings:

SUFFICIENT IN LEGAL TERMS

In legal terms, "sufficient" generally pertains to meeting the necessary criteria or standards required for a legal purpose. Here are a few specific contexts:

1. **Sufficient Evidence:** This means that the evidence presented is adequate to support a legal claim or defence.

2. Sufficient Grounds: This refers to having enough legal basis or justification for taking a particular legal action or making a legal claim. For instance, a plaintiff must have sufficient grounds to file a lawsuit, meaning there are valid reasons supported by facts and law.

SATISFACTION IN LEGAL TERMS

In legal terms, "satisfaction" refers to the fulfilment or discharge of a legal obligation, judgment, or claim. Here are some specific contexts where "satisfaction" is used:

In essence, satisfaction in legal terms means that an obligation, whether financial, contractual, or otherwise, has been fully met or resolved.

OBJECTIVE MEANING

Objectivity refers to the quality of being unbiased, impartial, and based on observable facts rather than personal feelings, opinions, or interpretations. It involves assessing or presenting information in a way that is neutral and free from personal bias.

OBJECTIVITY MEANING IN LEGAL TERMS

In legal terms, objectivity refers to the principle of assessing facts, evidence, and legal arguments in an impartial and unbiased manner. It means making decisions or evaluations based on factual evidence and legal standards, rather than personal beliefs, emotions or interest.

SUBJECTIVE MEANING

The term "subjective" refers to perspectives, experiences, or interpretations that are influenced by personal feelings, opinions, and biases rather than objective facts. In other words, something subjective is shaped by individual viewpoints and can vary from person to person.

SUBJECTIVE MEANING IN LEGAL TERMS

1. Impartiality: Judges, juries, and legal professionals must approach cases and evidence without favoritism or prejudice. This means ensuring that personal opinions do not influence legal decisions or interpretations.

2. Fact-based Analysis: Legal decisions should be based on objective facts and evidence presented in the case. This includes evaluating witness testimonies, documents, and other relevant information without letting subjective perceptions affect the outcome.

> **3. Fair Application of Law:** The law must be applied consistently and fairly to all parties involved, without bias. Objectivity ensures that legal rules and principles are applied in a manner that upholds justice and equality.
> **4. Avoidance of Bias:** Legal professionals, including judges and attorneys, are expected to avoid conflicts of interest and maintain neutrality to ensure a fair trial or legal process.
> Overall, objectivity in the legal field is crucial for maintaining the integrity of the judicial process and ensuring that justice is administered fairly and based on clear, unbiased evidence and legal reasoning.

We agree to the submission made above by the learned counsel appearing for the respondent with regard to the actions taken by the Committee of Advisors to the materials on which basis the decision was made and subsequent approval of the Governor to the recommendation for dismissing the writ petitioner from service cannot be said to be cogent and sufficient basing on the objectivity of the satisfaction of the authority and subjective satisfaction of the Governor.

[51] On hearing the submissions made by the learned counsel appearing for the respondents and on perusal of the Hon'ble Supreme Court's judgments relied upon by the learned counsel, we are of the view that there is force and merit in the submissions made by the learned counsel appearing for the respondents and such submissions are reasonable and reliable in the facts and circumstances of the case and the observation made in the relied judgments of the Hon'ble Supreme Court are all applicable and supported the submission made by the learned counsel appearing for the respondents.

[52] The Governor could not have arrived at the subjective satisfaction that it was not expedient to hold inquiry as contemplated under Article 311(2) second proviso clause (c) of the Constitution of India on the basis of the recommendation of the Committee of Advisors which was based purely on allegations, as such the decision to dispense with departmental inquiry and satisfaction of the Governor is open to judicial review, as the satisfaction arrived at is vitiated by malafide and is based wholly on extraneous and irrelevant grounds.

[53] The learned counsel appearing for the respondent also preferred the judgment of the Hon'ble Supreme Court passed In ***Samsher Singh V. State of Punjab [1974 (2) SCC 831]*** **(Para No. 31& 57)** which reads as follows:

> *"31. Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or the decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halsbury's Laws of England 4th Ed.*

Vol. I, Paragraph 747 to p. 170 and Carltona Ltd. V. Works Commissioners).

57. *For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally."*

Further, the Hon'ble Supreme Court in ***PU Myllai Hlychho & Ors. V. State of Mizoram &Ors. [(2005) 2 SCC 92] (Para No. 14& 15)*** has observed that –

"14. *Our Constitution envisages the parliamentary or cabinet system of government of the British model both for the Union and the States. Under the cabinet system of government as embodied in our Constitution, the Governor is the constitutional or formal head of the State and he exercises all his power and functions conferred on him by or under the Constitution on the aid and advice of the Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.*

15. *The executive power also partakes the legislative or certain judicial actions. Wherever the Constitution requires the satisfaction of the Governor for the exercise of any power or function, the satisfaction required by the Constitution is not personal satisfaction of the Governor but the satisfaction in the constitutional sense under the cabinet system or government. The Governor exercises functions conferred on him by or under the Constitution with the aid and advice of the Council of Ministers and he is competent to make rules for convenient transaction of the business of the Government of the State, by allocation of business among the Ministers, under Article 166(3) of the Constitution."*

[54] The learned counsel appearing for the respondent referred to the decision of Hon'ble Supreme Court passed in ***Jaswant Singh V. State of Punjab & Ors. [(1991) 1 SCC 362]*** (Para No. 5) which reads as under:

> *"5. The impugned order of April, 7, 1981 itself contains the reasons for dispensing with the inquiry contemplated by Article 311(2) of the Constitution, Paragraph 3 of the said order, which we have extracted earlier, gives two reasons in support of the satisfaction that it was not reasonably practicable to hold a departmental enquiry against the appellant. These are (i) the appellant has thrown threats that he with the help of other police employees will not allow holding of any departmental enquiry against him and (ii) he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer. Now, as stated earlier after the two revision applications were allowed on October, 13, 1980, the appellant had re-joined service as Head Constable on March 5, 1981 but he was immediately placed under suspension. Thereafter, two show cause notices dated April, 4, 1981 were issued against him calling upon him to reply thereto within 10 days after the receipt thereof. Before the service of these notices the incident of alleged attempt to commit suicide took place on the morning of April, 6, 1981 at about 11.00 a.m. In that incident the appellant sustained an injury on his right arm with a knife. He was, therefore, hospitalised and while he was in hospital the two show cause notices were served on him at about 10.00 p.m. on April, 6, 1981. Before the appellant could reply to the said show cause notices respondent No. 3 passed the impugned order on the very next day i.e. April, 7, 1981. Now, the earlier departmental inquiries were duly conducted against the appellant and there is no allegation that the department had found any difficulty in examining witnesses in the said inquiries. After the revision applications were allowed the show cause notices were issued and 10 days time was given to the appellant to put in his replies thereto. We, therefore, enquired from the learned counsel for the respondents to point out what impelled respondent 3 to take a decision that it was necessary to forthwith terminate the services of the appellant without holding an inquiry as required by Article 311(2). The learned counsel for the respondents could only point out clause (iv)(a) of sub-para 29(A) of the counter which reads as under:*

> *"The order dated April 7, 1981 was passed as the petitioner's activities were objectionable. He was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful."*

This is no more than a mere reproduction of paragraph 3 of the impugned order. Our attention was not drawn to any material existing on the date of impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the respondents to disclose to the court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case (SCC p. 504, para 130).

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

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by respondent 3 it is contended that the appellant, instead of replying to the show cause notice, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc.

when he was in hospital. It is not show on what material respondent 3 came to the conclusion that the appellant had thrown threats as alleged in paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. Respondent 3's counter also does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with of the inquiry envisaged by Article 311(2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained."

[55] On the basis of the report, the Committee of Advisors recommended dismissal of the writ petitioner/respondent saying that it is not expedient to hold departmental inquiry in the interest of the security of the State as their prejudicial activities are affecting the security of the State. Before passing the above recommendation, the Committee of Advisors in the meeting held on 24.04.2017 observed and the reference is made to reproduce minutes of the meeting of Committee of Advisors at Para No. 17.

In the confidential file, the material placed before the Committee as well as before the Hon'ble Chief Minister and Hon'ble Governor, there is no document indicating the activities of the respondent; but only the above mentioned facts.

[56] In the facts and circumstances and as narrated above, we are of the view that the satisfaction of the Governor has been reached malafide, basing on wholly irrelevant and unreliable materials and extraneous or irrelevant grounds as such, the present dismissal order by invoking Article 311(2)(c) of the Constitution become subject to judicial review. The official record placed before us, as per this Court's direction, did not disclose any materials to support that the subjective satisfaction of the Governor was arrived at validly and reasonably.

[57] From the registration of the FIR till the dismissal of the writ petitioner/respondent which took about two and half years, the authority, in all the documents placed before us, failed to mention and establish the continuity of the petitioner's involvement with unlawful organisation and engagement in the subversive activities which would have otherwise satisfied the authority to take steps/recommend that the writ petitioner/respondent to be dismissed from service under Article 311(2)(c) of the Constitution as it is not expedient to hold departmental inquiry in the interest of security of the State as the prejudicial activities are affecting the security of the State.

[58] Mention is made here again that this decision was taken after the lapse of two and half years and the inquiry was initiated and concluded after filing the written argument from the

part of the writ petitioner/respondent meaning that departmental inquiry had then reached its final stage and abrupt volte-face of the disciplinary authority with apparent no new development in between.

[59] We have already expressed our opinion and already given our observation that the disciplinary authority failed to convince us that the invocation of Article 311(2)(c) of the Constitution of India in dismissing the writ petitioner from service are without malafide but, in our opinion, the step was taken malafidely.

[60] The learned counsel appearing for the respondent submitted that basing on the proposition of laws laid by the Hon'ble Supreme Court of India in the cases aforementioned and various other judgments rendered in this regard, it is very clear that the recommendation of the Committee of Advisors is not binding on the Governor and the Governor in exercise of his constitutional power cannot give approval to the recommendation of the Committee of Advisors constituted pursuant to the office memorandum dated 16.08.2008, in a routine manner/fashion.

[61] After hearing both the learned counsels and also after perusal of the pleadings with the citations submitted by both parties in support of their case, we have put forth three questions to consider in the present case. They are -

(i) Whether the satisfaction to be arrived at by the Governor is subjective satisfaction?

Yes, the satisfaction to be arrived at the Governor is subjective but, the opinion of the inquiry authority should be objective basing on the materials placed before them and the satisfaction arrived at by the Governor should be on the basis of relevant materials placed before it.

(ii) Whether the subjective satisfaction arrived at by the Governor can be subject to judicial review?

Yes, if the satisfaction arrived by the Governor is shown malafide and basing on the irrelevant materials placed before it, it is subject to judicial review.

(iii) If there can be judicial review, what are the grounds which can be subjected to judicial review?

(a) On the ground of malafide or being based wholly on extraneous and/or irrelevant ground.
(b) If the material, on which the action is taken, is found to be irrelevant.
(c) If the decision was made on malafide or extraneous consideration in arriving such decision that subjective to judicial review.

As regards the issue No. (i), after going through the pleadings of the parties, the observations made by the Hon'ble Supreme Court as reproduced above and the observation herein above by us, we are of the opinion that satisfaction to be arrived at by the Governor in this regard, should be a subjective satisfaction.

Our view, in this regard, is well explained at Para No. 9 of the office memorandum which reads as follows:

> *"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 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 is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."*

As regards the issues No. (ii) & (iii), we are of the considered view that the satisfaction arrived at by the Governor can be subject to judicial review, if the subjective satisfaction for invoking Article 311(2) of the Constitution of India, is arrived at:

(a) On the ground of malafide or being based wholly on extraneous and/or irrelevant ground.

(b) If the material, on which the action is taken, is found to be irrelevant.

(c) If the decision was made on malafide or extraneous consideration in arriving such decision that subjective to judicial review.

[62] The Hon'ble Supreme Court observed in ***Union of India V. Tulsiram Patel [(1985) 3 SCC 938]*** at Para No. 130, 133 & 134 that –

> *"130. ..... 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.*
>
> *133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry."

[63] The Hon'ble Supreme Court in ***Union of India & Anr. V. M.M. Sharma [(2011) 11 SCC 239]*** observed at Para No. 18 that–

"18. It should also be pointed out at this stage that sub-clause (b) of the second proviso to Article 311(2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken Sub-clause (c) of the second proviso to Article 311(2) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the Stat e. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the Tribunal, where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of the security of the State is based on reasons and is not arbitrary. If and when such an order is challenged in the Court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of security of the State."

[64] The Hon'ble Supreme Court in ***Dr. V.R. Sanal Kumar v. Union of India &Ors. [2023 LiveLaw (SC) 432]*** observed at Para No. 23 that –

> *"23. Paragraph 126 of the decision of the Constitution Bench in **Tulsiram Patel's** case (supra) would reveal that the Constitution Bench, while considering a provision parimateria to Rule 16(iii) of the CCA Rules viz., Rule 14 of the Railway Servants Rules, found error inasmuch as the issue was considered by confining to Rule 14 itself, without taking into account the second proviso of Article 311 (2) of the Constitution of India. After observing that exercise of power is always referable to the source of power and must be considered in conjunction with it and held that the source of power to dispense with an inquiry, in such circumstances, is derived from the second proviso to Article 311(2). Bearing in mind the said observation and holding we have carefully considered the order passed by the Administrative Tribunal which was subjected to further judicial review by the High Court. We have no hesitation to hold that a bare perusal of the order of the Tribunal would reveal that the tribunal had considered the question not confining its consideration only to Rule 16(iii) of CCA Rules but also taking into consideration the source of power derived from the second proviso to Article 311(ii) of the Constitution of India. Obviously, the question whether it is expedient to hold an inquiry as provided under the CCA Rules has to be considered and the satisfaction as to its expediency or inexpediency has to be reached based on "interest of the security of the State". The meaning and scope of the expression 'security of the State' has been considered by the Constitution Bench in **Tulsiram Patel's** case (supra). It was observed that the expressions "Law and Order", "Public Order" and "security of the State" have been used in different Acts. Situations which affect "Public Order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "Public Order". It was therefore, observed and held that of all these situations those which affect "security of the State" are the gravest. The expression "security of the State" does not mean security of the entire country or a whole State and it includes security of the part of the State. Furthermore, it was held that there are various ways in which "security of the State" could be affected such as, by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It was also held that it would be difficult to enumerate the various ways in which the "security of the State" could be affected and the way in which "security*

of the State" would be affected might be either open or clandestine. In Paragraph 142 of Tulsiram Patel's case (supra) it was further held:

> *"142. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) "in the interest of the security of the State." The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The Satisfaction of the President or the Governor must, therefore, be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State."*

[65] As discussed above, the steps taken by the appellant/State Government to remove the respondent from his service was under Article 311(2)(c) and on perusal of the same, it is crystal clear that the President or the Governor as the case may be, if satisfied in the interest of the security of the State, is the constitutional authority to decide that it is not expedient to hold such inquiry. However, this step can be taken when the Governor is satisfied beyond reasonable doubt of the report submitted by the Committee of Advisors. The decision of the Governor should be in a concrete manner.

[66] The issue involved in this case was whether the disciplinary authority was justified in imposing penalty on delinquent employee without holding any inquiry as provided in Article 311(2) second proviso (b) of the Constitution of India.

[67] The disciplinary authority passed an order for dismissal of the petitioner from service under Article 311(2)(c) of the Constitution of India as it was not expedient to hold departmental inquiry holding that the delinquent employee's prejudicial activities were affecting the sovereignty and integrity and security of the State.

[68] Some of the principles to be followed by the authority in exercise of power under Article 311(2)(c);

(i) It is well settled that the reason so recorded must be causing sufficient satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary it must be based on objectivity.

(ii) The Court is required to consider what a reasonable man taking a reasonable view would have done in the situation then prevailing.

(iii) In order of disciplinary authority in a case of this nature must be judged by a Court exercising power of judicial review by placing itself in the disciplinary authority's arm chair.

(iv) The disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practical 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 order or penalty following thereupon would both be void and unconstitutional.

(v) The power to dismiss an employee by dispensing with an inquiry if not to be exercised so as to circumvent the prescribed rules.

(vi) It is an established principle of law that an inquiry under Article 311(2) of the Constitution of India is a rule and dispensing with the inquiry is an exception.

[69] As per our direction, the State authority produced the original/confidential file and placed before us and we already made observation about the contents of the confidential file.

The Hon'ble Supreme Court in the case ***Southern Railways Association and Anr. V. Union of India &Ors.(2009)9 SCC 24 at Para No. 23*** observed that –

> *"23. In Kuldip Singh v. State of Punjab this Court held: (SCC pp. 662-63, para 7)*
>
> > *"7. At our direction made on 22-4-1996 in this matter, the learned counsel for the State has produced the original record relating to the appellant's dismissal along with translated copies of the relevant documents. The first document placed before us by the learned counsel for the State is the copy of FIR No. 219 of 1990 dated 24-11-1990. It is based upon the statement of Head Constable Hardev Singh, who was posted as gunman with Shri Harjit Singh, Superintendent of Police, (SP) (Operations). The FIR speaks of the jeep (in which the said SP was travelling along with certain police personnel) being blown up killing the said SP and few other police officials. The next document placed before us is the case diary pertaining to the said crime containing the statement of the appellant, Kuldip Singh. In his statement, Kuldip Singh did clearly state about his association with certain named militants, the plot laid by them to kill Shri Harjit Singh, Superintendent of Police, Tarn Taran by placing a bomb and the manner in which they carried out the said plot. He also stated that he and*

his militant companions planned to plant a bomb in the office of SSP, Tarn Taran but that the police officers came to know of the said plan, thus foiling their plan. The learned counsel for the State of Punjab did concede that except the aforesaid statement of admission/confession of the appellant, there was no other material on which the appellant could be held guilty of conduct warranting dismissal from service."

[70] **Some of the admitted positions of facts**:

(i) The respondent joined service in the year 2007.

(ii) The respondent was suspended from service while posted as Sub-Inspector of Police (CID) on 24.01.2015 and FIR case was registered being FIR No. 21(1)2015 U/S 38(1) UA(P) Act Section 5 (b) of the Official Secret Act. But, charge sheet is not yet filed. After lapse of one year, memorandum dated 22.02.2016 was issued for initiating departmental inquiry vide orders dated 22.02.2016 and 27.02.2016, the inquiry officer and presenting officer were appointed respectively.

(iii) Written statement of defence was submitted on 03.03.2016 and the supplementary written statement of defence was also submitted on 12.09.2016. The delinquent also appeared before the presenting officer pursuant to an in compliance with signals dated 19.09.2016 and 19.11.2016. Thereafter, the delinquent submitted his written argument to the inquiry authority on 05.12.2016.

(iv) The respondent was departmentally proceeded by issuing Article of charge dated 22.02.2016 was issued by SP(CID).

(v) As the departmental inquiry was not moving further, the delinquent while representation dated 04.05.2017 seeking for reinstatement on the ground that two years have passed since initiation of departmental inquiry.

(vi) The State Government issued an order dated 13.07.2017 by invoking Article 311 (2) second proviso clause (c) of the Constitution of India.

(vii) The delinquent filed writ petition challenging the dismissal order before the Hon'ble Single Judge and the Hon'ble Single Judge was pleased to allow the writ petition and directed the authority to reinstate the respondent. The said direction is as follows:

> *"18. No material has been placed before this Court qua the satisfaction stated in the impugned dismissal order. Nothing on record before the Court to show that the petitioner is closely associated with the Commander of Auxiliary Battalion of PLA/RPF viz., Sagolsem Bobby @ Ahingcha and also he had provided secret and vital official information to the said Ahingcha. The alleged expert report stated in the counter has not been placed before this Court. Moreover, the allegations levelled against the petitioner requires thorough inquiry by way of oral and documental proof."*

(viii) Against the said order of the Hon'ble Single Judge, the State Government filed the present writ appeal.

(ix) The dismissal order was issued after nearly two and half years and the said order was issued by the State when already two parallel proceedings that is departmental and criminal prosecution are pending.

[71] In the present case, the authority resorted to roman No. (ii) & (iii) of the 3 (three) exceptions, but we have already expressed our opinion and observation that even though the authority has taken the step, the step taken by the authority are against the provision of law laid down by the Hon'ble Supreme Court and in the Constitution as well as in the office memorandum. We also expressed our opinion that the decision of the authority was taken malafide.

In this regard, we made reference to the Hon'ble Supreme Court's observation made in the case of ***Tulsiram Patel & Ors.***(supra).

[72] As regards the action under clause (c) of the second proviso to Article 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 Article 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 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 is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

[73] In ***Union of India vs. M.M. Sharma (2011) 11 SCC 293 at Para No. 18***, the Hon'ble Supreme Court observed that sub-clause (c) of the second proviso to Article 311(2), on the other hand, does not specifically prescribe for recording of such reasons for the satisfaction but at the same time, there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the Tribunal. When legality of such an order is challenged, to ascertain as to whether such an order passed in the interest of the security of the State is based on reasons and is not arbitrary. If and when such an order is challenged in the court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the inquiry in the interest of security of the State.

[74] Basing on the observation made above by the Hon'ble Supreme Court, we are of the considered view that it is imperative for us to call the confidential file that was put up before the Hon'ble Governor and the learned Deputy Advocate General put up the confidential file before us and on perusal of the file, we did not find any cogent and reliable material to support the decision taken by the authorities and we did not find any observation of the Hon'ble

Governor regarding the satisfaction to invoke Article 311(2)(c) of the Constitution against the respondent, but only the words **"may be approved".**

On further perusal of the entire record, we found nothing except the correspondence made between the officials regarding the criminal case against the respondent.

[75] In view of the situation deducible from the materials on record, we find absolutely no reason to hold that the satisfaction, as envisaged in the observation of the Hon'ble Supreme Court that it is not expedient to hold an inquiry in the interest of security of the State, was arrived at, based on reasonable and cogent ground. In the official record there is no material indicating that there are sufficient and cogent reasons for dispensing with the inquiry in the interest of security of the State and in the absence of clear indication of the satisfaction, we hold that the invoking of Article 311(2)(c) by the State Government is malafide.

Accordingly, we find the act of the Hon'ble Governor in approving for invoking Article 311(2)(c) of the Constitution of India is malafide and liable to be interfered with .

[76] As per the office memorandum No. 11012/11/86-ESTT(A), dated 11.11.1985as reproduced hereunder for invoking Article 311(2)(c).

The safeguards provided for holding inquiry .....

.....

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

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

(b) The holding of enquiry also can be dispensed with where the authority, empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reasons, to be recorded by that authority in writing, it is not reasonable to hold such an enquiry as provided under clause.

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

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

[77] Here, in the instant case, after going through the entire pleadings of the parties and the relevant provision of law, the rules of business as exercised by the authority for invoking Article 311(2) of the Constitution of India against the respondent, we could not find the above mentioned three illustrative cases which could be applied in the present case as it then stood.

[78] In the office memorandum mentioned above itself mentioned/stated that Para No. 9 stated that -

> *".....*
> *.....*
>
> *Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is 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 i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."*

[79] It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity. For convenience and for satisfaction, we make reference to the meanings of cogent, sufficient, satisfaction which are already reproduced at Para No. 50.

[80] **THE SATISFACTION OF THE GOVERNOR IN THIS REGARD**

As per the submission of the learned Deputy Advocate General, the satisfaction of the Governor as envisaged in Article 311(2) second proviso, clause (c) of the Constitution is not the personal satisfaction of the Governor, but the satisfaction to be arrived with the aid and advice of the council of Ministers. The learned Deputy Advocate General referred to Para No. 48 of the judgment of the Hon'ble Supreme Court in ***Shamsher Singh's*** case (supra).In this regard, we have already observed at Para No. 12.

[81] In this regard, the learned Deputy Advocate General referred to Para No. 142 of the Hon'ble Supreme Court's judgment passed in ***Tulsiram Patel's*** case (supra).

The Hon'ble Supreme Court observed that in the interest of the security of the State, the satisfaction of the Governor therefore be with respect of the expediency or in-expediency of holding an inquiry in the interest of the security of the State. The satisfaction so reached by the President or the Governor must

necessarily be a subjective satisfaction. The satisfaction may be arrived at as a result of secret information received by the Governor.

[82] The learned Deputy Advocate General also referred to the judgment of the Hon'ble Supreme Court passed in ***Union of India & Ors. V. Major SP Sharma & Ors. [(2014) 6 SCC 351].***

The Hon'ble Supreme Court observed that power is conferred on the President to terminate the services on the material brought to his notice.

As observed earlier, in the instant case, the materials placed before the Hon'ble Governor was not reliable enough to come to the satisfaction for revoking Article 311(2)(c) of the Constitution of India for dismissing the writ petitioner.

[83] The learned Deputy Advocate General also referred to the judgment of the Hon'ble Supreme Court passed in ***Balbir's*** case (supra).

The Hon'ble Supreme Court observed that judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution, if it is to ascertain whether the satisfaction arrived at by the President or Governor is vitiated either by malafide or is based on wholly extraneous and/or irrelevant grounds. Further, it is observed that so long as there is material before the President which is relevant for

arriving at his satisfaction, the Court would be bound by the order so passed. This Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has said, (1) that the order would be open to challenge on the ground of malafides or being based wholly on extraneous and/or irrelevant grounds; (2) even if some of the material on which the action is taken is found to be irrelevant the court would still not interfere so long as there is some relevant material sustaining the action; (3) the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President; (4) the ground of mala fides takes in, inter alia, situations where the proclamation is found to be a clear case of abuse of power, (5) the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the president and the Council of Ministers are the best judge of the situation and that they are also in possession of information and material and the Constitution has trusted their judgment in the matter; (6) this does not mean that the President and the Council of Ministers are the final arbiters in the matter that their opinion is conclusive; (cf. also Union of Territory, Chandigarh v. Mohinder Singh).

In the instant case, as observed above by us, that the satisfaction of the Hon'ble Governor was by malafide basing on extraneous and/or irrelevant grounds put up/recommended by the disciplinary authority and that the materials on which basis the disciplinary authority have taken decision for recommendation by invoking Article 311(2)(c) of the Constitution of India are wholly unreliable materials.

[84] The learned Deputy Advocate General further referred to Para No. 6 of the office memorandum which is extracted hereinabove.

In the office memorandum, the contemplation of Article 311(2) should be resolved to in the opinion of a reasonable man taking a reasonable view of the prevailing situation and in the 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.

As discussed and observed earlier, we are of the view that in the instant case, the disciplinary authority failed to fulfil the above mentioned three illustrative cases as the disciplinary authority failed to exhibit to the fact that in the midst of the departmental inquiry:

(i) the writ petitioner has thrown threats that he with the help of other will not allow holding of any departmental inquiry against him.
(ii) he and his associates will not hesitate the cause physical injury to the witnesses as well as the inquiry officer.

[85] After perusal of the pleadings and cited jurisprudence extracted above, it is seen and evident that the satisfaction as mentioned in the provision in arriving to the acceptance of the proposal made by the Committee of Advisors to exercise for invoking clause (c) to second proviso to clause (2) of Article 311 of the Constitution are subjective but, the materials placed before it to be relevant. If the decision was made after the relevant materials placed before the Governor and the decision was made with no malafide or extraneous consideration in arriving such decision, there will be no judicial review to the decision arrived at. But, if the

satisfaction was made on malafide or extraneous consideration in arriving such decision it can be subjected to judicial review.

[86] The satisfaction of the Governor must be with respect to expediency or in-expediency of holding inquiry in the interest of the security of the State. As such, the satisfaction so reached by the President or Governor must necessarily be a subjective satisfaction. Expediency involved matters of policy and satisfaction may be arrived at, as a result of secret information received by the Governor about the brewing danger to the security of the State. As observed earlier, the disciplinary authority failed to make out their case and the materials on which basis they have taken their satisfaction for revoking Article 311(2)(c) of the Constitution of India was done with malafide intention. Accordingly, their satisfaction to come to the conclusion was not objective. As such, it is observed that the satisfaction, arrived at by the Hon'ble Governor on the basis of the secret information and the recommendation of the Committee of Advisors was not subjective satisfaction as such, the decision made therein was malafide.

[87] The order of the President/Governor can be examined to ascertain whether it is vitiated either by malafide or it is based on wholly extraneous and/or irrelevant grounds and so long as there is material before the President/Governor which is relevant for arriving

at his satisfaction as to the Court would be bound by the order so passed.

In short, the order of the President or Governor would be open to challenge on the ground of malafide or being based wholly on extraneous and irrelevant grounds.

[88] Where an authority has to form an opinion that an employee is likely to be engaged in subversive activities, it can only be matter of interference from the course of conduct of the employee and his antecedents must form the best material for the same.

[89] Further, if the decision was arrived at based on the subjective satisfaction of the President/Governor on materials, the question of judicial review does not arise. But, the decision was taken without the subjective satisfaction of the President/Governor not basing on materials, the interference of the Court may arise.

In short, the Governor could not have arrived at the subjective satisfaction that it was not expedient to hold inquiry as contemplated under Article 311(2) second proviso clause (c) of the Constitution of India on the basis of the recommendation of the Committee of Advisor which was based purely on allegation as such, the decision to dispense with the departmental inquiry and satisfaction of the Governor is open to judicial review. As the

satisfaction arrived at is vitiated by malafide and is based wholly on extraneous and irrelevant grounds.

[90] The learned counsel appearing for the respondent submitted that basing on the proposition of laws laid by the Hon'ble Supreme Court of India in the cases aforementioned and various other judgments rendered in this regard, it is very clear that the recommendation of the Committee of Advisors is not binding on the Governor and the Governor in exercise of his constitutional power cannot give approval to the recommendation of the Committee of Advisors constituted pursuant to the office memorandum dated 16.08.2008.

[91] The disciplinary authority, in its order dated 13.07.2017, categorically stated that the Governor of Manipur is satisfied under sub-clause (c) of proviso to clause (2) of Article 311 of the Constitution that in the interest of security of State, it is not expedient to hold an inquiry in the case of involvement and association with subversive activities of the delinquent and the Governor satisfied with the information available, the activities of the delinquent are such to warrant his dismissal from service, accordingly, dismissed the delinquent.

[92] After considering the facts and circumstances as narrated above and our view and observations made above, we have come to the conclusion that the present appeal has got no

merit and no leg to stand on and we are not satisfied with the grounds taken by the appellant in view of the admitted position of facts and law as set out above. Even though we agree with the conclusion drawn by the Ld. Single Judge in setting aside the dismissal order dated 13.07.2017 dismissing the writ petitioner by invoking Article 311(2)(c) of the Constitution of India, we are not agreeable with the grounds taken by the Ld. Single Judge for setting aside the dismissal order. Accordingly, we dismiss the present appeal, however without any order as to cost.

The appellants are directed to implement the directions given by the Ld. Single Judge within a period of 3 (three) months from the date of receipt of a copy of this order.

JUDGE **JUDGE** **CHIEF JUSTICE**

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