IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19823-2026 (O&M)

Rajinderpal Singh ...Petitioner

Versus

State of Punjab & others ...Respondents

Sr. No.	***Particulars***	***Details***
1.	*The date when the judgment is reserved*	*01.10.2026*
2.	*The date when the judgment is pronounced*	*02.11.2026*
3.	*The date when the judgment is uploaded on the website*	*02.11.2026*
4.	*Whether only operative part of the judgment is pronounced or full judgment is pronounced*	*Full*
5.	*The delay, if any, of the pronouncement of full judgment, and reasons thereof*	*N.A.*

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. A.K.Virdi, Advocate,
for the petitioner.

Mr. Siddharth Sandhu, AAG, Punjab.

NAMIT KUMAR, J.

1. The petitioner has filed the instant petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ of certiorari for quashing/setting aside the order dated 06.08.2021 (Annexure P-1), whereby the petitioner has been dismissed from service by invoking Article 311(2)(b) of the Constitution of India read with Rule 16.2(1) of the Punjab Police Rules, 1934, without holding a regular departmental enquiry and order dated 19.06.2025 (Annexure P-5), whereby the appeal dated 07.08.2021 preferred by the petitioner, has been consigned to record by

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respondent No.2. Further, a writ of mandamus has been sought for directing the respondents to grant all consequential benefits along with interest arising therein to the petitioner in the event of quashing of impugned order/s dated 06.08.2021 and 19.06.2025 as well as to restore the status of the petitioner to the position which existed prior to the passing of impugned order dated 06.08.2021.

2. Briefly stated, the facts of the case are that the petitioner joined the Punjab Police as a Constable on 07.11.1989 and was promoted to the rank of Head Constable in the year 1995 and thereafter as Assistant Sub Inspector in the year 2008. In the year 2021, the petitioner was implicated in FIR No.126 dated 06.08.2021, registered at Police Station STF, Phase-4, SAS Nagar, Mohali, under Sections 15 & 29 of the NDPS Act (Annexure P-2), on the allegations that he (petitioner), along with others, was found in possession of 350 kgs. of poppy-husk while travelling in a white coloured Scorpio vehicle bearing registration No.DL-4C-NB-5595. The petitioner was arrested on the same day, i.e. 06.08.2021. On the same very day i.e. 06.08.2021, the Commissioner of Police, Ludhiana - respondent No.4, being the competent authority, passed the order dated 06.08.2021 (Annexure P-1), dismissing him from service by invoking powers conferred under Article 311(2)(b) of the Constitution of India read with Rule 16.2(1) of the Punjab Police Rules, without holding a regular departmental inquiry. The relevant extract from the said order reads as under:

> *"Whereas, it has been brought to my notice that ASI/LR Rajinderpal Singh No.302/LDH posted in Police Commissionerate Ludhiana being the member of a disciplined force is indulging in illegal NARCO trade activities by misusing his official status. In this regard, AIG (Special Task Force), Ludhiana Range vide his report*

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No. 725/Reader/AIG/STF, dated 06/08/2021 has reported that a criminal case bearing FIR No.126 dated 06/08/2021 u/s 15, 29 NDPS Act, 1985 was registered against him and others at PS STF, District STF, Phase-4, SAS Nagar on the basis of secret information. He has been apprehended while travelling in a car make Scorpio bearing registration No.DL-4C-NB-5595 and Poppy Husk weighing 3 Qtls 50 Kgs has been recovered from his conscious possession. In this way ASI/LR Rajinderpal Singh No 302/Ldh being a member of discipline force has shown grave misconduct on his part and misused his official position which has brought an adverse in the general public.

Whereas, after perusing the official record and after applying my unbiased independent mind, I, being the competent authority, after examining and considering all the aspects, has made up my mind that it is not at all desirable to retain ASI/LR Rajinderpal Singh No.302/LDH in service at the public expense. His retention and continuation in service may be detrimental to the interests of the state as well as the general public and to safeguard these interests with immediate effect, I consider that in view of the indulgence of ASI/LR Rajinderpal Singh No.302/LDH in illegal NARCO trade activities, it is not reasonably practicable to hold any enquiry against him at this stage. I being the competent authority, is also well aware that the penalty of dismissal from service is very harsh and oppressive for a public servant, but no sympathy can outweigh the consideration of the protection of the interests of the state and the regard for public good.

Therefore, I, Rakesh Agrawal, IPS, Commissioner of Police, Ludhiana being the competent authority and having the powers to dismiss ASI/LR Rajinderpal Singh No.302/LDH from service, while exercising those powers conferred under rule 16.2 (1) of PPR and under article 311 (2) (b) of the Constitution of India, hereby dismiss ASI/LR Rajinderpal Singh No.302/LDH from service with immediate effect."

3. Aggrieved by the order of dismissal from service, the petitioner preferred an appeal dated 07.08.2021 (Annexure P-6). However, when the

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same was not decided for a considerable period of time, the petitioner after a period of 4 years approached this Court by way of CWP-14698-2025, which was disposed of vide order dated 21.05.2025 (Annexure P-9) by passing the following order:

> *"1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 06.08.2021 (Annexure P-1) whereby he was dismissed from service by Commissioner of Police, Ludhiana.*
>
> *2. Mr. Aman Dhir, DAG, Punjab, who on advance notice is present in Court, submits that appeal of the petitioner is under active consideration and final order shall be passed within one month from today.*
>
> *3. Faced with this, Mr. Raj Kumar Arya, learned counsel for the petitioner seeks permission to withdraw instant petition with liberty to avail remedies against order passed by Director General of Police.*
>
> *4. Dismissed as withdrawn with aforesaid liberty.*
>
> *It is made clear that if order is not passed by Director General of Police within 1 month from today, it would be viewed adversely because appeal is already pending for almost 4 years."*

4. It was, in compliance of the said order, that the appeal of the petitioner was consigned to the office, vide order dated 19.06.2025 (Annexure P-5). The relevant extract from the order dated 19.06.2025 reads as under:

> *"xx xx xx*
>
> *Subject:- Appeal against order of dismissal by former ASI Rajinderpal Singh No. 302/Ludhiana.*
>
> *In reference of your office letter no. 64803/Law & Order-5 dated 17-06-2025 regarding above mentioned subject matter.*
>
> *2. Through the above reference, comments and records regarding the appeal of the above employee have been sent to this office. That the appellant's appeal against the orders of his dismissal*

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was filed in this office even before the final orders of the Appellate Authority (yourself), it was received in this office on 24-04-2025. Whereas as per the rules, a revision petition can be filed after the final orders of the Appellate Authority. Therefore, the appeal of the above petitioner has been consigned to the office.

3. Therefore, it is written to you by returning the relevant records to inform the appellant in this regard."

5. Reply by way of an affidavit of Mr. Vaibhav Sehgal, PPS, Addl. Deputy Commissioner of Police (Headquarters), Ludhiana, has been filed on behalf of the respondents, wherein the facts stated hereinabove have not been disputed. However, with regard to dispensing with the enquiry, it has been stated in paras 4 & 5 as under:

"4. That it is further submitted that as far as the question of holding a departmental inquiry is concerned, in cases involving serving police officers, witnesses may be reluctant to depose freely due to apprehension of pressure or intimidation. Such circumstances may enable the accused officer to influence the witnesses, thereby making a fair, impartial and effective departmental inquiry difficult to conduct. It is submitted the disciplinary authority after carefully considering the facts and circumstances and after examining the seriousness of the conduct was satisfied that the petitioner has severely tarnished the image of the Punjab Police and has acted in violation of the discipline and conduct rules of the Punjab Police.

5. That for the reasons stated hereinabove, regular departmental enquiry was dispensed on cogent material and not solely on the 'ipse dixit' of the concerned competent punishing authority. The condition precedent was satisfied before the action under Article 311(2)(b) of the second proviso taken against the petitioner is that holding of enquiry is not reasonably practicable in the opinion of a reasonable prudent person taking a reasonable view of the prevailing situation."

6. Learned counsel for the petitioner has submitted that the impugned order of dismissal from service does not contain any cogent or

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legally sustainable reason for dispensing with the departmental enquiry. Learned counsel further submitted that dismissal from service, being a major penalty, ordinarily cannot be imposed without conducting a regular departmental enquiry in accordance with the prescribed procedure and that recourse to Article 311(2)(b) of the Constitution is permissible only in exceptional circumstances where the competent authority records a constitutionally sufficient satisfaction that it is not reasonably practicable to hold such enquiry. Learned counsel further submitted that the punishment imposed upon the petitioner is also contrary to Rule 16.2 of the Punjab Police Rules, particularly when the petitioner had rendered approximately 31 years of service and had a clean service record. Further, the punishing authority also failed to take into consideration the claim of pension of the petitioner before passing the punishment order. Learned counsel for the petitioner has lastly submitted that there is yet another infirmity in the decision-making process, inasmuch as respondent No.2 has merely consigned the petitioner's appeal to the office without considering the grounds raised therein or ensuring its adjudication on merits. It is, therefore, contended that respondent No.2 ought to have directed respondent No.3, being the appellate authority, to consider the grounds raised by the petitioner and decide the appeal on merits, in accordance with law.

7. Per contra, learned State counsel has submitted that since the petitioner along with others was found in possession of 350 kgs. of poppy-husk, while travelling in a white coloured Scorpio vehicle, therefore, he has rightly been dismissed from service by invoking the exceptional power contained in Article 311 (2)(b) of the Constitution of India.

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8. I have heard learned counsel for the parties and have perused the record with their able assistance.

9. Admittedly, the petitioner was dismissed from service on the basis of the registration of the aforesaid FIR by invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. The relevant constitutional provision 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 a authority subordinate to that by which he was appointed.*
>
> ***(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges**;*
>
> *Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*
>
> *Provided further that this clause shall not apply-*
>
> *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
>
> ***(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry**; or*

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> *(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."*

10. A plain reading of the aforesaid Article makes it clear that the authority, who is empowered to dismiss or remove a person or to reduce his rank, without holding a departmental inquiry, is required to record reasons in writing explaining why it is not reasonably practicable to hold such an inquiry.

11. The scope and ambit of clause (b) of the second proviso to Article 311(2) of the Constitution of India came up for consideration before the Hon'ble Supreme Court in *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398, wherein it was held that the disciplinary authority is not expected to dispense with a departmental enquiry lightly or arbitrarily. The satisfaction of the competent authority must be founded upon relevant material and cannot rest merely upon its own assertion. Following the law laid down by the Hon'ble Supreme Court in *Tulsiram Patel's case (supra)*, as subsequently reiterated in a catena of judgments, and taking into consideration the guidelines/instructions dated 02.09.2022 issued by the Director General of Police, Punjab, Chandigarh, pursuant to the directions issued by this Court vide order dated 04.07.2022 in CWP-13285-2022, titled as *Ex. Constable Vikas No.950/FZR v. State of Punjab and others*, this Court in ***Gursher Singh Sandhu v. State of Punjab and others***, ***2026 Law Finder (P&H) 26471 (CWP-878-2025 decided on 01.09.2026)***, examined the manner in which the provisions of Article 311(2)(b) of the Constitution of India had been invoked by the State of Punjab in a large number of cases,

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without strict adherence to the constitutional safeguards governing the dispensing with of a regular departmental enquiry. In the said judgment, this Court observed as under:

> *"35. It is trite law that the decision of the appointing authority on the issue of 'recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable' may be subject to judicial review under Article 226 by the High Court. The Constitution Bench of the Hon'ble Supreme Court in* ***Tulsiram Patel's case (supra)****, has reiterated the legal position and authoritatively explained the scope and ambit of Article 311(2) and the second proviso thereto. The Court has made it clear that the power under Article 311(2)(b) is an exceptional power and cannot be exercised arbitrarily or merely for the purpose of avoiding a departmental enquiry. The condition precedent for invoking Clause (b) is the existence of circumstances which render the holding of an enquiry not reasonably practicable and the recording, in writing, of reasons for the satisfaction of the disciplinary authority. It has been held as under:*
>
> > *"32. The arguments advanced on behalf of the government servants on the pleasure doctrine and the second proviso to Article 311 (2) may be sketched in broad outlined as under:*
> >
> > *(1) The pleasure doctrine in England is a part of the special prerogative of the Crown and has been inherited by India from England and should, therefore, be construed strictly, that is, strictly against the Government and liberally in favour of government servants.*
> >
> > *(2) The second proviso which withdraws from government servants the safeguards provided by clause (2) of Article 311 must be also similarly construed for, unless a liberal construction were placed upon it, great hardship would result to government servants as they could be arbitrarily thrown out of employment and they and their dependents would be left without any means of subsistence.*
> >
> > *(3) There are several stages before a government servant can be dismissed or removed or reduced in rank, namely, serving upon him of a show cause notice or a charge-sheet,*

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giving him inspection of documents, examination of witnesses, arguments and imposition of penalty. An inquiry starts only after a show cause notice is issued and served upon a government servant. A show cause notice is thus preparatory to the holding of an inquiry and even if the entire inquiry is dispensed with, the giving of a show cause notice and asking for the explanation of the government servant with respect there to are not excluded.

(4) It is not obligatory upon the disciplinary authority to dispense with the whole of the inquiry. Depending upon the circumstances of the case, the disciplinary authority can dispense with only a part of the inquiry.

(5) Imposition of penalty is not a part of the inquiry and once an inquiry is dispensed with, whether in whole or in part, it is obligatory upon the disciplinary authority to give an opportunity to the government servant to make a representation with respect to the penalty proposed to be imposed upon him.

(6) Article 311 is subject to Article 14. Principles of natural justice and the audi alteram partem rule are part of Article 14 and, therefore, a show cause notice asking for the explanation of the government servant with respect to the charges against him as also a notice to show cause with respect to the proposed penalty are required to be given by Article 14 and the not giving of such notices or either of them renders the order of dismissal, removal or reduction in rank invalid.

33. The submissions on behalf of the Union of India can be thus summarized :

(1) The second proviso must be construed according to its terms. It is unambiguous and does not admit of any such interpretation as canvassed for on behalf of the government servants.

(2) Where under the second proviso, clause (2) of Article 311 is made inapplicable, there is no scope for holding any partial inquiry.

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(3) In any event, the very contents of the three clauses of the second proviso show that it is not necessary or not practicable or not expedient that any partial inquiry could be or should be held, depending upon which clause applies.

(4) Article 14 does not govern or control Article 311. The Constitution must be read as a whole. Article 311(2) embodies the principles of natural justice including the audi alteram partem rule. It thus expressly states what is required under Article 14 as a result of the interpretation placed upon it by recent decisions of this Court. Once the application of clause(2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14.

(5) Consideration of sympathy for the government servants who may be dismissed or removed or reduced in rank are irrelevant to the construction of the second proviso. The doctrine of tenure at pleasure in Article 310 and the safeguards given to a government servant under clauses (1) and (2) of Article 311 as also the withdrawal of the safeguard under clause (2) by the second proviso are all enacted in public interest and where public interest conflicts with private interest, the latter must yield to the former.

The Pleasure Doctrine:

34. The concept of civil service is not now or of recent origin. Governments - whether monarchial, dictatorial or republican - have to function; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not, because it is not possible for one man by himself to rule and govern the land and look after and supervise all the details of

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administration. As it was throughout history, so it has been in England and in India.

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The Second Proviso to Article 311(2):

60. Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(1) is abridged because Article 311(2) is a express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause(1) of Article 311, however, remains intact and continues to be available to the government servant. The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are:-

(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; and

(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 Construction to be placed upon the second proviso and the scope and effect of that proviso were much debated at the Bar. In ***Hira Lal Rattan Lal etc. v. State of U.P. & Anr., [1973] 2 S.C.R. 502*** *this Court observed (at page 512) ;*

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"In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislature intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section."

In ***Commissioner of Income Tax, Madras v. Madurai Mills Co. Ltd., [1973] 3 S.C.R. 662****, this Court said (at page 669):*

"A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of the enacting part of the statute is plain and unambiguous and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from a proviso."

61. The language of the second proviso is plan and unambiguous. The key-words in the second proviso are "this clause shall not apply". By "this clause" is meant clause(2). As clause(2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to given them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public

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policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

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129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrolable. Not taking prompt action may also be construed by the trouble- makers and agitators as sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation

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of the authorities. After all, clause (b) is not meant to be applied in ordinary, normal situations but in such situations where is not reasonably practicable to hold an inquiry.

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

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also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of ***Arjun Chaubey v. Union of India and others, [1984] 3 S.C.R. 302****, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to*

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be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

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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."

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41. In view of the settled proposition of law, as discussed above, and on overall analysis of the intent of Article 311(2) of the Constitution, it is vivid that an employee can only be dismissed or removed or reduced in rank after an inquiry by supplying the charges against him and giving a reasonable opportunity of being heard in respect of those charges, however, the applicability of the exceptional proviso of clause (b) of second proviso to Article 311 (2) of Constitution of India is restricted to a situation, wherein conduct of the delinquent led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank, records reason in writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. The disciplinary authority must not dispense with an enquiry merely on the basis of its subjective satisfaction or by mechanically reproducing the language of Article 311(2)(b) of the Constitution. The reasons must demonstrate the existence of circumstances which genuinely render the holding of the enquiry impracticable.

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Ordinarily, circumstances such as witnesses being unwilling to depose on account of threats, intimidation or coercion may constitute relevant considerations. However, the mere seriousness of the allegations or the possibility that the delinquent employee may not cooperate cannot, by itself, satisfy the constitutional requirement. The wording as used in clause (b) of the second proviso indicates the satisfaction of the Disciplinary Authority by using the word "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. The Hon'ble Supreme Court emphasized the meaning of "not reasonably practicable" as juxtaposed against not "impracticable". The Hon'ble Supreme Court clarified that the disciplinary authority is not expected to dispense with a departmental inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and may fail. Further, the Court emphasised the words used in clause (b) of second proviso that the disciplinary authority should record its reasons in writing for its satisfaction that holding an inquiry is not reasonably practicable. In case, such reason is not recorded in writing or not valid and justifiable, the order dispensing with the inquiry and the order of penalty flowing therefrom would be void and unconstitutional. In that situation, it remains always open to the Court to take the case out of purview of that clause and the order of penalty would stand invalidated.

42. This Court has also noticed the manner in which the State of Punjab has invoked Article 311(2)(b) of the Constitution in a large number of cases. In ***CWP-13285-2022*** *titled* ***'Ex. Constable Vikas No.950/FZR Vs. State of Punjab & others' this Court, vide order dated 04.07.2022****, observed as under:*

"xx xx xx

This Court has noticed while dealing with the current roster, that a large number of writ petitions are being filed against the order of dismissal invoking Article 311(2)(b) of the Constitution of India. The competent authorities are ignoring the law as settled by the Supreme Court regarding dismissal of an employee under Article 311(2)(b) of the

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Constitution of India, which leads to the impugned orders being set aside.

It might be appropriate for the State Governments to look into this issue and apprise the competent authorities about the relevant case law pertaining to invoking Article 311(2)(b) of the Constitution of India at the time of seeking to summarily dismiss the Government employees.

Let a copy of this order be conveyed to the Chief Secretaries of the States of Punjab and Haryana as well as the Advisor to Administrator, U.T., Chandigarh."

43. In compliance of said directions, the office of the Director General of Police, Punjab, Chandigarh, issued guidelines/ instructions dated 02.09.2022, which reads thus:

"Subject:- Guidelines/Instructions for compliance of the Orders of the Hon'ble Punjab and Haryana High Court, pertaining to invoking Article 311 (2) (B) of the Constitution of India in cases involving dismissal of an employee/official.

Memo

1. In this regard, the Hon'ble Punjab and Haryana High Court has issued directions in the ***Civil Writ Petition 13285 of 2022 titled as Ex Constable Vikas No. 950/FZR Vs State of Punjab and others on 04.07.2022*** *that:-*

"xx xx xx"

2. That in compliance with the aforesaid directions of the Hon'ble High Court, this office is issuing guidelines/instructions for the basic understanding of the Article 311 (2) (b) while invoking the same in cases of dismissal, removal or reduction in rank of the employee/official. It has been seen in many cases that the order passed by the Competent Authorities under Article 311 (2) (b) have failed in the Hon'ble Courts and the Hon'ble Courts have set aside such dismissal order of the personnels time and again and reinstated them in service. The Hon'ble Courts have also observed in numerous cases that decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authorities. It is well settled proposition of law that due reasons are necessary to

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be recorded in writing as to why it was not practicably possible to conduct an enquiry.

3. That the Hon'ble Supreme Court of India and Hon'ble High Courts, in catena of judgments have specifically made clear that order of dismissal is not to be passed in a mechanical manner. It has also been held that only in cases where disciplinary authorities are satisfied on the basis of material available on file that the case is of such a nature that it is not practicable possible to hold an enquiry in view of threat, inducement, affiliation with criminals etc. that article 311(2) (b) of Constitution of India, is to be invoked.

4. That the Hon'ble Supreme Court of India and High Courts have delivered various judgments on the interpretations of Article 311 (2) (b). Few are mentioned here and are required to be followed in letter and spirit while dealing in cases involving Article 311 (2) (b) of the Constitution of India.

*1. The Hon'ble Supreme Court of India in **Union of India Vs Tulsi Ram Patel & others**, judgment dated 11.07.1985 is well traversed and has clarified the constitutional provisions as embodied in Article 311(2) of the Constitution. The judgment is detailed and is a settled law pertaining to matters involving article 311(2)(b) of the Constitution of India.*

*2. In **CWP No.15903 titled as Dinesh Singh Vs State of Punjab & others decided on 30.08.2016**, the Hon'ble Court has held "Constitution of India, 1950 Article 311 (2) due reasons are necessary to be recorded as to why it was not practicably possible to conduct an enquiry or how it was not convenient to authority or inquiry officer to conduct an enquiry-said provisions are attracted by exercising extraordinary powers under extraordinary circumstances- absence of extraordinary circumstances while invoking provisions of article 311 (2) (b) can be termed as misuse of power and as such, action of the authority is not sustainable in the eyes of law.*

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*3. The Hon'ble Punjab & Haryana High Court in **CWP No. 10423 of 2020 titled Sarabjit Singh Vs State of Punjab & others** has held that authority chose to dismiss petitioner without holding Inquiry- careful reading of the impugned order shows that there is total absence of reasons in this regard- mere observation that departmental enquiry at this stage does not appear to be justified is not sufficient to invoke powers under clause (b) of the 2nd proviso to article 311(2) of the Constitution of India. Petitioner directly to be re-instated.*

5. It should also be ensured that recording in writing of the reasons for dispensing with the enquiry must precede an order imposing the penalty. Legally speaking the reasons for dispensing with the enquiry need not find 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 the reasons which lead the disciplinary authority to the conclusion that it was not reasonably practicable to hold an enquiry. The reasons so given should not be vague or they should not be just a repetition of the language of the relevant rules.

6. That the aforementioned guidelines/instructions and the relevant detailed case laws are to be examined and followed by the concerned disciplinary authority while invoking article 311(2)(b) Constitution of India. These guidelines/instructions alongwith relevant case laws are to be strictly adhered and their meticulous compliance is to be ensured."

44. It has also been noticed by this Court that, in a number of cases, Police Officers/Officials have been dismissed from service by invoking the provisions of Article 311(2)(b) of the Constitution merely on account of registration of an FIR against them……

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54. It is also apt to state here that the State Government itself, through the guidelines/instructions dated 02.09.2022, issued by the

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office of the Director General of Police, Punjab, had drawn the attention of the competent authorities to the settled legal position that orders under Article 311(2)(b) of the Constitution should not be passed mechanically and that reasons for dispensing with the enquiry must be supported by material available on record. The said guidelines specifically caution that the decision to dispense with a departmental enquiry cannot rest merely upon the ipse dixit of the competent authority and that the reasons must not be vague or merely reproduction of the language of the relevant constitutional provision.

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56. While considering the provisions of Article 311(2)(b) vis-à-vis Punjab Police Rules, 1934, a Coordinate Bench in ***Baljinder Singh v. State of Punjab & others****, (****CWP-8612-2021 decided on 13.05.2024****), observed as under:*

> *"3. Mr. Anupam Bhardwaj, Advocate submits that there was no occasion to dispense with mandatory inquiry contemplated by Article 311 of Constitution of India read with Rule 16.24 of the 1934 Rules. The respondents acting in a mechanical manner dispensed with inquiry and dismissed the petitioner from service. The co-accused was initially suspended and he has been re-instated.*
>
> *4. Per contra, Mr. Pawan Kumar, DAG, Punjab submits that petitioner accepted illegal gratification from accused in aforementioned FIRs, thus, it was indispensable to dismiss him from service. It was not possible to conduct inquiry, thus, he was dismissed without conducting inquiry.*
>
> *xx xx xx*
>
> *8. The reason advanced by SSP for dispensing with inquiry is not the actual reason because same reason has been advanced in every case where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold inquiry. Mere writing one line in the impugned order that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules. The respondent instead of straight away*

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dismissing the petitioner could put him under suspension and thereafter conduct inquiry. This course was adopted in the case of co-accused, thus, there was no reason to adopt different course in the case of petitioner. It is interesting to note that FIR was registered against the petitioner as well as HC Jatinder Singh and he has been re-instated before awaiting conclusion of criminal proceedings.

9. In the wake of above discussion and findings, this Court is of the considered opinion that respondents without any logical reason dispensed with mandatory inquiry. The impugned orders deserve to be set aside and accordingly set aside.

It is made clear that petitioner, as conceded, shall not be entitled to back wages. The respondent shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings."

57. In ***Rakesh Kumar v. State of Punjab & others****, (****CWP-14712-2017 decided on 25.04.2022****), this Court observed as under:*

"8. The petitioners were appointed as Constables with the Punjab Police and were dismissed from service by invoking Article 311(2) (b) of the Constitution of India as FIR No.74 dated 25.07.2014, under Section 384 of the IPC and Section 7 and 8 of the Prevention of Corruption Act, 1988 came to be registered against them. The date of dismissal is the same date as the date of registration of the FIR. While dismissing a government servant under Article 311 (2) (b), the appropriate disciplinary authority has to record reasons in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause. The satisfaction under this clause has to be of the disciplinary authority that has the power to dismiss, remove or reduce the Government servant in rank. As a check against an arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed

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procedure must be recorded in writing setting out why it would not be practicable.

9. On perusal of impugned order of termination, it is apparent that no reasons whatsoever have been recorded to show as to how the provisions of Article 311 (2) (b) have been attracted. A reading of the impugned order would show that the reason for dispensing of holding a regular enquiry is that a finding is given that no witness is likely to come forth to depose and that the petitioner has a criminal mentality, but there is no material available to support this ground.

xx xx xx

11. The law is this regard is no longer res intergra, as can be noticed from the judgements as cited above. Therefore the impugned orders would not be sustainable.

12. Another reason for setting aside the impugned orders is that a co-accused in the FIR, who was also dismissed by the authorities while dispensing with regular enquiry, had filed an appeal before the Additional Chief Secretary Government of Punjab, Department of Home Affairs and Justice and the said appeal was allowed holding that it was not fair to dismiss the appellant with hearing and that departmental proceedings were liable to be initiated. The appellant Harjap Singh stood reinstated and the period from date of dismissal till reinstatement was to be treated as Non Duty Period. The petitioners who are similarly situated as said Harjap Singh, too should be given an opportunity of hearing.

13. Consequently the writ petitions are allowed and the impugned order dismissing the petitioners from service vide order 25.07.2014 (Annexure P-3) and the orders passed on the statutory appeal dated 02.03.2016 (Annexure P-6), by respondent No.4 and order dated 16.04.2016 (Annexure P-8) passed by respondent No.3 in revision, are set aside leaving it open to the department to take departmental action against the petitioners in accordance with law, if needed."

58. The power under Article 311(2)(b) cannot, therefore, be invoked merely because the disciplinary authority apprehends that

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the delinquent employee may not cooperate with the proceedings. There must exist some objective circumstance which makes a fair enquiry genuinely impracticable. Circumstances, such as, threats, intimidation or coercion of witnesses, interference with the Enquiry Officer, or tampering with evidence may ordinarily furnish a valid basis. However, no such circumstance has been demonstrated in the present case."

12. Recently, the Hon'ble Supreme Court in ***Manohar Lal v. Commissioner of Police & others, 2026 SCC OnLine SC 363*** has again held that the reasons recorded by the disciplinary authority must establish the existence of circumstances which render the holding of a departmental enquiry not reasonably practicable. The power cannot be exercised on the basis of a mere '*ipse dixit'* or an unsubstantiated apprehension. It has been held as under:

"35. In the case at hand after registration of the FIR when the appellant was in custody the order of dismissal was passed. He was released only thereafter. As such, without indicating any instance of intimidation, traumatising, threatening or persuading the complainant or the witness to turn hostile from inside the jail, the belief or presumption as recorded by the disciplinary authority is not sufficient to bring the present case within the exception to Article 311 (2) by applying clause (b) of second proviso thereto. Thus, in our view, the reasoning contemplated in the judgment of ***Jaswant Singh*** *(Supra) applies in the case at hand.*

xx xx xx

40. On overall analysis of the intent of Article 311(2), it is vivid that an employee holding a post in Union or State ought not to be dismissed or removed by an authority subordinate to the one by which he was appointed. It is further specified that a person shall be dismissed or removed or reduced in rank after an inquiry supplying the charges if any against him and giving a reasonable opportunity of being heard in respect of those charges. The applicability of the said clause is restricted in a situation wherein his conduct led to his

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conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank records reason in writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. In addition, where such power has been exercised by the President or the Governor it may be in the interest of security of the State or if not expedient to hold such an enquiry, then exceptional power under clause (c) of second proviso to Article 311 ought to be exercised.

41. In case such a decision invoking the extraordinary power is taken by the competent authority in light of the judgment ***Tulsiram Patel*** *(Supra) within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In addition, the satisfaction as recorded must be the objective satisfaction on the basis of material brought on record which ordinarily the disciplinary authority may take as a prudent person. Otherwise, dispensing with the enquiry is not permissible in law. In the present case, Section 21 of the 1978 Act confers power of punishment and Section 22 prescribes the procedure for awarding such punishment. The procedure as contemplated has been elaborated under the 1980 Rules. In the present case, in our view, the power exercised by the authority is completely without application of mind, thus, the question of recording of satisfaction as affirmed by the appellate authority, the CAT and the High Court does not arise. Therefore, we can hold that the order dispensing with the regular procedure of inquiry is arbitrary and consequently the order of dismissal of the appellant is liable to be quashed and the orders of the CAT and the High Court affirming the said dismissal order stand set aside."*

13. Applying the aforesaid principles to the facts of the present case, it emerges that the petitioner was dismissed from service, vide order dated 06.08.2021 (Annexure P-1) i.e. on the same very day on which FIR No.126 dated 06.08.2021 was registered against him. The main ground recorded in the dismissal order is that the petitioner was allegedly

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apprehended while travelling in a white coloured Scorpio vehicle in which 350 kgs. of poppy-husk was recovered and that his alleged involvement in narcotics-related activities had tarnished the image of the police force. The competent authority thereafter recorded that it was not reasonably practicable to hold a departmental enquiry against the petitioner.

14. A careful perusal of the impugned order, however, reveals that no specific circumstances have been pointed out to demonstrate why a regular departmental enquiry could not reasonably have been conducted against the petitioner. There is neither any reference to a specific witness having been threatened or intimidated by the petitioner, nor any material indicating that he had attempted to tamper with the evidence. Further, no other circumstance has been pointed out that could have rendered the holding of a regular departmental enquiry not reasonably practicable. The dismissal order proceeds on the seriousness of the allegations and the apprehension that the petitioner's retention in service might be detrimental to the interests of the State and the general public. These considerations may have a bearing upon the nature of the allegations or the desirability of initiating disciplinary proceedings, but the same do not, in the absence of any further material, satisfy the requirement for dispensing with such proceedings.

15. The assertion of the respondents that the witnesses in departmental proceedings against serving police personnel may be reluctant to depose freely and that the petitioner might influence the witnesses, is not supported by any specific instance. The mere fact that the petitioner was a member of the police force cannot lead to a presumption that the witnesses would not depose freely against him or that the departmental enquiry could

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not be conducted fairly. The respondents were required to record in writing the circumstances which rendered the holding of a regular departmental enquiry not reasonably practicable. However, no such material has been brought to the notice of this Court to justify dispensing with the enquiry.

16. The impugned order further records that the competent authority had examined all aspects of the matter and had applied its independent mind. However, a mere recital that the authority has applied its mind cannot be made basis to exercise the extraordinary power under Article 311(2)(b) of the Constitution of India. The reasons recorded must disclose a rational nexus between the circumstances prevailing at the relevant time and the conclusion that holding a departmental enquiry was not reasonably practicable. In the present case, the impugned order does not disclose any such nexus.

17. Furthermore, the petitioner had preferred an appeal dated 07.08.2021 (Annexure P-6) against the order of dismissal. However, when the appeal remained undecided for nearly four years, the petitioner approached this Court by filing CWP-14698-2025, which was disposed of vide order dated 21.05.2025 (Annexure P-9), with liberty to avail the remedies against the order passed by the Director General of Police. However, a perusal of the order dated 19.06.2025 (Annexure P-5) reveals that the petitioner's appeal was still not examined on merits, but the same was consigned to the office on the ground that the appeal had been received before passing of the final order by the appellate authority and that a revision petition could be filed only thereafter. As such, the aforesaid order does not constitute a decision on the merits of the petitioner's challenge to his dismissal. The said order neither examines the legality of dispensing with

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the departmental enquiry nor addresses the grounds raised by the petitioner regarding the invocation of Article 311(2)(b) of the Constitution of India by the competent authority. The petitioner cannot be denied consideration of his appeal on merits, particularly when the same had remained pending for an inordinately long period of approximately 4 years and this Court had already directed its expeditious consideration.

18. The petitioner had joined the Punjab Police on 07.11.1989 and had rendered more than 31 years of service before his dismissal from service on 06.08.2021. Rule 16.2(1) of the Punjab Police Rules, 1934 stipulates the circumstances in which the punishment of dismissal may be imposed, including the requirement that dismissal be reserved for the gravest acts of misconduct or for the cumulative effect of misconduct proving incorrigibility and complete unfitness for police service. The length of service rendered by the petitioner and his service record were, therefore, relevant considerations while examining the legality of the extreme penalty imposed upon him. However, neither the order of dismissal dated 06.08.2021 (Annexure P-1) nor the appellate order dated 19.06.2025 (Annexure P-5) consigning the petitioner's appeal reflects any consideration of the length of service rendered by the petitioner, his past service record or his claim to pension, as specifically mandated under Rule 16.2 of the Punjab Police Rules, 1934.

19. In view of the above discussion, this Court is of the opinion that the impugned order dated 06.08.2021 (Annexure P-1) suffers from non-compliance with the mandatory requirements of Article 311(2)(b) of the Constitution of India. The order dated 19.06.2025 (Annexure P-5)

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consigning his appeal to the office without adjudication on merits, also cannot be sustained.

20. Consequently, the present petition is allowed. The order/s dated 06.08.2021 (Annexure P-1) and 19.06.2025 (Annexure P-5) are hereby quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits.

21. However, the setting aside of the impugned orders and direction for reinstatement shall be without prejudice to the right of the respondents to take recourse in accordance with law. The respondents shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings.

02.11.2026 **(NAMIT KUMAR)**
Vimal **JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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