R.N.R.

Before M. M. Kumar & T. P. S. Mann, JJ.

YUNISH MASIH,—*Appellant*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

LPA No. 788 of 2009

in CWP No. 1879 of 2009

25th February, 2011

Constitution of India, 1950—Arts. 226 & 311(2)(b)—Punjab Police Rules, 1934—Rls. 16.1 & 16.38—An ASI found with links with terrorists and supplying them secret information on movement of police—Competent authority forming an opinion that holding of departmental inquiry against petitioner would not be reasonably practicable—Dismissal from service by invoking provisions of Art. 311(2)(b)—Sufficient reasons for dispensing with inquiry and same have also been recorded in order—No fault can be found with order of dismissal—Provisions of Rl. 16.38 not applicable because no departmental inquiry held—Appeal dismissed, order of Single Judge dismissing writ petition upheld.

(17) (2008) 9 S.C.C. 177
(18) AIR 2010 S.C. 433

Held, that a persual of Zimni No. 14, dated 13th June, 1993, would make it patent that the appellant had close connection with various terrorist organizations as he used to pass on information to them with regard to movement of the police. The hard/non-hardcore terrorist like Jaspal Singh *alias* Kulwant Singh was the beneficiary and he also disclosed that there were other terrorist organizations who were beneficiary of the disclosure of information by the petitioner-appellant. It was, therefore, rightly concluded by the authorities that it was not reasonably practicable to hold an inquiry in accordance with Article 311(2) of the Constitution because of the links of the appellant-petitioner with the terrorist organizations. The condition that there are sufficient reasons, which are germane to the provisions of Article 311(2)(b) stands satisfied. Once it has been found while investigating case FIR No. 159/92, dated 28th December, 1992, that Jaspal Singh *alias* Kulwant Singh had revealed that the petitioner-appellant was mixed up with the terrorists and was passing on secret information to them then no fault can be found with the order dated 17th June, 1993.

(Paras 20 &24)

Further held, that for holding a departmental inquiry, Rule 16.38 might be mandatory. However, it would not apply to cases where no departmental inquiry is to be held like the one in hand. In the instant case the question was not to hold a departmental inquiry but the question was to dispense with the inquiry by invoking the provisions of Article 311(2) of the Constitution. Therefore, it cannot be concluded that in a case like the one in hand, Rule 16.38 would have any application. There is nothing in Rule 16.38, which would indicate that even for dispensing with the inquiry under the provisions of Article 311(2)(b), permission from the District Magistrate would be required. A perusal of Rule 16.38 would show that whenever Superintendent of Police receives information regarding commission of an offence by the police officer then he should report the matter to the District Magistrate who may order a preliminary inquiry to be held. However, in the present case the question was to dispense with the departmental inquiry and it appears to us that the Rule did not oblige the authority to seek the sanction from the District Magistrate. Therefore, we find that Rule 16.38 would not apply to the facts of the present case.

(Paras 27 & 28)

R. S. Bains, Advocate, for the appellant.

Suvir Sehgal, Addl. AG , Punjab for the respondents.

M. M. KUMAR, J.

(1) The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 21st April, 2009 rendered by the learned Single Judge dismissing the writ petition filed by the petitioner-appellant.

(2) Brief facts of the case are that the petitioner-appellant joined the Punjab Police as Constable in 1970. In 1988 he was promoted as Head Constable and in 1992 as officiating Assistant Sub-Inspector. He has claimed that he has always worked with great zeal by putting his life in danger in anti-terrorist operations during militancy in the State of Punjab. For his meritorious service a number of cash rewards/commendation certificates were awarded to him. The Senior Superintendent of Police, Amritsar, recommended his name for promotion to List C-II, *vide* letter dated 10th July, 1988 (P-15). Thereafter, even the Deputy Inspector General of Police, Border Range, Amritsar, also recommended his name for promotion to the post of ASI, *vide* letter dated 16th May, 1989 (P-20). On 26th May, 1992, the Inspector General of Police passed an order approving his fortuitous promotion to the rank of ASI with immediate effect for showing excellent performance on extremist's front (P-24).

(3) On 17th June, 1993 the Senior Superintendent of Police Amritsar, dismissed the petitioner-appellant from service exercising powers vested in him under Article 311(2)(b) of the Constitution read with Rule 16.1 of the Punjab Police Rules, 1934 (for brevity, 'the Rules'). The Senior Superintendent of Police, Amritsar, recorded reasons in writing that it would not be practicable to hold departmental inquiry and dispensed with the same for the following two reasons :

> "1. That no public witness is likely to depose against him; he has links with the militants who are operating in Punjab.
>
> 2. The Departmental enquiry will take a long time and till its completion his retention in the police force is risky and not in public interest."

(4) From a perusal of the dismissal order it is apparent that the basis for dismissal of the petitioner-appellant is some information that was received from reliable sources that the petitioner-appellant was mixed up

with terrorists as it was disclosed during investigation by a hardcore terrorist in case FIR No. 159, dated 28th December, 1992, under Sections 302/34 IPC, 3/4/5 TADA Act, registered at Police Station 'B' Division, Amritsar that the petitioner-appellant used to supply secret information regarding movement of police department as well as para military forces to the terrorists. Against the dismissal order dated 17th June, 1993 (P-28), the petitioner-appellant filed an appeal, which was rejected by the Inspector General of Police, Border Range, Amritsar (P-29). Thereafter, the petitioner-appellant filed CWP No. 1879 of 1994 before this Court.

(5) During the pendency of the writ petition, the petitioner-appellant also placed on record a report dated 4th November, 2004 submitted by the SHO, Police Station 'B' Division, Amritsar, wherein it has been disclosed that an FIR No. 159, dated 28th December, 1992, under Sections 302 /34 IPC, Sections 25/27/54/59 of the Arms Act and Sections 3/4/5 of the TADA Act was registered on the statement of one Bua Dass son of Parshotam Dutt, resident of House No. 4628, Main Bazar, Ram Nagar, Sultanwind Road, Amritsar. The said FIR relates to killing of Bawa Dass, brother of the complainant. It was also reported that some unknown persons ran away from the spot and the FIR was declared untraced on 21st July, 1993. The petitioner-appellant also placed on record copy of the statement of one Jaspal Singh *alias* Kulwant Singh, son of Surjan Singh, resident of Amritsar, which was allegedly recorded by SI Gurbachan Singh, Police Station 'B' Division, Amritsar, and later on used against the petitioner appellant for dismissing him from service. However, the learned Single Judge dismissed the writ petition, *vide* order dated 21st April, 2009, by concluding as under :—

> "In the present case, the secret information is received relating to anti-India activities of the petitioner that he has been supplying secret information about the movement of police and para-military forces. In the year 1993, the State of Punjab was still passing through the crucial phase infected with militancy for the past so many years and no risk can be taken in the interest of the nation. In the reply, it is further stated that the information received by the SHO was further confirmed by the Assistant

Superintendent of Police and Superintendent of Police (City-I) Amritsar. I have no reason to disbelieve this fact that the credibility of the police official is in question and the authorities are satisfied on the basis of the information received about his unlawful activities, particularly affecting the sovereignty and integrity of the nation. No risk is permissible and no laxity is called for."

(6) Mr. R.S. Bains, learned counsel for the petitioner appellant has raised numerous submissions. His first submission is that the order dated 17th June, 1993 (P-28), dispensing with the inquiry is wholly laconic and is not germane to the provisions of Article 311 (2) (b) of the Constitution. According to the learned counsel, firstly, no public witnesses were required to depose against the petitioner-appellant for his alleged links with the militants who were operating in Punjab. Secondly, the delay in departmental inquiry can also not be the basis for dispensing with such an inquiry under Article 311 (2)(b) of the Constitution. Learned counsel has submitted that the inquiry could have been easily held and only 2-3 witnesses were required to be produced. He has maintained that the order of dismissal is wholly arbitrary and is an attempt to deprive the petitioner-appellant of his rights conferred by Article 311(2) to have a fair hearing in the matter of dismissal, which is an extreme act against an employee.

(7) Mr. Bains has also attacked the basis of order dated 17th June, 1993 arguing that it is based on one zimni recorded by SI Gurbachan Singh, Police Station 'B' Division, Amritsar in case FIR No. 159, dated 28th December, 1992, registered under Sections 302/34 IPC read with Sections 25/27/54/59 Arms Act and Sections 3/4/5 TADA Act. According to the learned counsel the zimni recorded during interrogation of one Jaspal Singh would not inspire confidence because Jaspal Singh *alias* Kulwant Singh could not be regarded as terrorist. In fact, a case was planted against him for concealing hand-grenade but by a judicial verdict dated 9th August, 1988, the learned Additional Sessions Judge had acquitted the aforesaid Jaspal Singh of the charge (P-49). Mr. Bains has drawn our attention to paragraph 11 of the judgement passed by the learned Additional Sessions Judge showing that recovery of a grenade and cartridges from Jaspal Singh is fabricated by the police with a view to involve him in a criminal case. He was, in fact, already in their custody and it was necessary

for the police to explain his detntion. For that reason the incriminating material was planted against him and that he has succeeded in establishing that he was in custody since 6th August, 1987. On the basis of the aforesaid finding of the learned Additional Sessions Judge learned counsel has submitted that it would be very vague evidence for the authorities to rely upon and to conclude that the petitioner-appellant has links with terrorists like Jaspal Singh *alias* Kulwant Singh. In support of his submission, learned counsel has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Jaswant Singh** *versus* **State of Punjab (1),** and **A. K. Kaul** *versus* **Union of India (2),** and argued that unless there are reasons in writing recorded for the satisfaction of the authority concerned, inquiry under Article 311(2)(b) of the Constitution cannot be dispensed with. He has maintained that far from the fact that the reasons are germane to Article 311(2)(b), it could not have been concluded by a reasonable man that disciplinary inquiry was not reasonably practicable. He has also placed reliance on a Division Bench judgment of this Court rendered in the case of **Darshan Jit SinghDhindsa** *versus* **State of Punjab (3),** and a Single Bench judgment of this Court in the case **Ex-Constable Sangram Singh** *versus* **State of Punjab (4).**

(8) Mr. Bains has supported his argument by referring to report dated 15th June, 1993 sent by the SI/SHO PS 'B' Division, Amritsar, where the aforesaid Jaspal Singh *alias* Kulwant Singh has been described as non-hardcore terrorist, who was absconder. Learned counsel has pointed out that at one stage the aforementioned Jaspal Singh has been regarded as hardcore and at another stage he is regarded as non-hardcore. He has questioned that how the aforesaid Jaspal Singh could be considered as absconder. The argument appears to be that there is no authenticity and verification of Jaspal Singh as to whether he is such a dangerous person that holding of inquiry would be reasonably impracticable.

(9) Mr. Bains has also pointed out that the petitioner-appellant has an excellent service record as is revealed from the recommendation made in his favour by the Inspector Incharge, Police Chowki New Abadi

(1) (1991) 1 S.C.C. 362
(2) (1995) 4 S.C.C. 73
(3) 1993 (2) R.S.J. 650
(4) 1995 (4) S.L.R. 536

Faizpur, Amritsar (P-26). A perusal of the recommendation would show that for his excellent, honest, sincere and meritorious duties, he has been granted four first class and four second class and total of 25 certificates including third class Certificate from 1967 to 1992. He has also been awarded cash award and numerous other certificates which have been listed in the aforesaid recommendation. The letter further reveals that he has been dealing with various groups of terrorists with an iron hand who have attacked him a number of times. It shows that one Balkar Singh *alias* Baldev Singh was found dead when the petitioner-appellant was leading the police party. The aforesaid terrorist had a reward of Rs. 40,000 on his head and was killed in an encounter with the police party headed by him. On the basis of the aforesaid meritorious record the petitioner-appellant was recommended for promotion as ASI by the Senior Superintendent of Police to the Inspector General of Police.

(10) Another submission made by Mr. Bains is that it was incumbent upon the authorities to place the whole matter before the District Magistrate to decide by virtue of Rule 16.38 of the Rules as to whether criminal case be filed against the petitioner-appellant or he should be proceeded in a departmental inquiry. According to the learned counsel since no steps were taken in that direction, the whole prceedings are vitiated.

(11) Mr. Suvir Sehgal, learned Additional Advocate General, Punjab, has explained zimni No. 14, dated 13th June, 1993. In the aforesaid zimni the statement of Jaspal Singh *alias* Kulwant Singh hard/non-hardcore terrorist has been recorded by SI Gurbachan Singh, belonging to Police Station 'B' Division, Amritsar. According to Mr. Sehgal the statement of Jaspal Singh @ Kulwant Singh shows that Yunish Masih-appellant, who was previously Hawaldar (Head Constable), used to supply him the information regarding the movement of police force so that he along with others could escape. The statement further highlights that the appellant had links with other terrorist organisations and also supplied them information regarding movement of police and that when he (Jaspal Singh) was acquitted in 1988 in case FIR No. 97, dated 27th August, 1987, under Sections 4 and 5 of the Explosive Act and 25 of the Arms Act, registered at Police Station 'B' Division, Amritsar, the appellant had advised him to leave the city of Amritsar. The petitioner-appellant continued to supply him information off and on even after Jaspal Singh @ Kulwant Singh left the city. To a

pointed query from the Court that why Jaspal Singh @ Kulwant Singh would make disclosure statement in case FIR No. 159/92, dated 28th December, 1992, during his interrogation, the learned Additional Advocate General replied that the object was to explain his absence to the police as he was wanted in the aforesaid FIR. Therefore, Mr. Sehgal has maintained that the information regarding links of the appellant with terrorists had come in a natural course of interrogation and has direct link with the case FIR No. 159/92, dated 28th December, 1992. Therefore, the argument of Mr. Sehgal is that the order of dismissal, dated 17th June, 1993 (P-28), is fully supported and contain authentic reasons which are directly relatable to the requirement of Article 311(2)(b) of the Constitution.

(12) In order to buttress his stand, Mr. Sehgal has placed heavy reliance on paras 133, 134, 135 and 141 of the landmark judgment of a Constitution Bench of Hon'ble the Supreme Court in the case of **Union of India** *versus* **Tulsiram Patel (5),** and argued that the Court could interfere in the order dispensing with inquiry if it was based on reasons which are irrelevant or that no reasonable person would proceed on the basis of the material placed before him. Learned counsel has pointed out that in considering the relevancy of the reasons given by the disciplinary authority the court is not to sit in judgment over such reasons like a court of first appeal and to find out whether the reasons are germane to Article 311(2)(b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. Therefore, the order dated 17th June, 1993 (P-28) passed by the competent authority has to be examined keeping in view the situation which was prevailing in the year 1992-93 in the State of Punjab.

(13) Mr. Sehgal has also placed reliance on the observations made in para 11 by Hon'ble the Supreme Court in the case of **Kuldip Singh** *versus* **State of Punjab (6).** According to Mr. Sehgal the facts of that case are quite akin to the circumstances of the case in hand . He has submitted that judicial notice of the fact was taken with regard to extra ordinary situation prevailing in the State of Punjab during years 1990-91. He has also argued that in **Kuldip Singh's case** (supra) despite the fact that during the trial his confession statement could not be made basis for convicting

(5) (1985) 3 S.C.C. 398
(6) (1996) 10 S.C.C. 659

him, the statement was permitted to be used for the purposes of dispensing with departmental inquiry under Article 311(2)(b). Likewise, he has placed reliance on another judgment of Hon'ble the Supreme Court rendered in the case of **Union Territory, Chandigarh** *versus* **Mohinder Singh, (7),** for the same purpose of taking judicial notice of the situation prevailing in the State of Punjab in the year 1991. He has then placed reliance on a Division Bench judgment of this Court rendered in the case of **Ex-Constable Ranbir Singh** versus **State of Punjab (8).** Placing reliance on the observations made in paras 8 and 9, learned counsel has argued that the reasons given in the present case in the impugned order are germane to the provisions of Article 311(2)(b) and the High Court may not like to act as a Court of Appeal. To the same effect is the Division Bench judgment in the case of **Gurbax Singh** versus **State of Punjab (9).**

(14) Controverting the arguments advanced on behalf of the appellant on the question of Rule 16.38 of the Rules, learned Additional Advocate General has argued that the controversy stands settled by the judgment of Hon'ble the Supreme Court rendered in the case of **State of Punjab** *versus* **Charan Singh, (10).** According to the view expressed by Hon'ble the Supreme Court, Rule 16.38 is not designed to be a condition precedent to the launching of a prosecution in a criminal court and it is in the nature of instructions to the department. In the same manner, another judgment of Hon'ble the Supreme Court has taken a similar view in the case of **State of Punjab** *versus* **Raj Kumar (11).** The judgment of Hon'ble the Supreme Court in **Charan Singh's case** (supra) has been followed and applied in **Raj Kumar's case** *(supra)* as well. Learned State counsel has concluded by citing another Division Bench judgment of this Court in the case of **Ex-Inspector Police Gulab Singh** *versus* **State of Punjab (12).**

(15) In rebuttal, Mr. R. S. Bains, learned counsel for the appellant while reiterating his arguments has submitted that all the judgments of Hon'ble the Supreme Court,which have been cited would not be applicable

(7) (1997) 3 S.C.C. 68
(8) 2003 (3) S.C.T. 852
(9) 2006 (4) R.S.J. 153
(10) (1981) 2 S.C.C. 197
(11) AIR 1988 S.C. 805
(12) 1993 (3) S.C.T. 644

to the facts of the present case because there the policemen were first tried and the disciplinary proceedings were dispensed with by invoking Article 311(2)(b) of the Constitution. Therefore, none of those judgments rendered in the cases of **Kuldip Singh** *(supra)* or **Mohinder Singh** (supra) would apply to the facts of the present case. He has also argued that the views of Hon'ble the Surpreme Court expressed in para 130 of the judgment in **Tulsiram Petel's case** *(supra)* must be kept in view where various situations have been illustrated in which it would not be reasonably practicable to hold an inquiry. According to Mr. Bains where the Government servant, particularly through or together, with his associates, so terrorises, threatens or intimidate witnesses who are to appear against him that they start fearing of reprisal as to prevent them from doing so or where the government servant by himself or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that he is afraid of holding the inquiry. If atmosphere of violence or of general indiscipline and insubordination prevails then also inquiry may be dispensed with . He has maintained that there is no such circumstance in the present case which might justify dispensing with the inquiry. Accordingly, he has requested for reversal of the judgment of learned Single Judge.

(16) Having heard learned counsel for the parties and perusing the original record produced before us, we find that the foundation of the order dated 17th June, 1993 (P-28) is the Zimni No. 14, dated 13th June, 1993. Therefore, it would be necessary to examine Zimni No. 14, dated 13th June, 1993, which has incorporated the statement of one Jaspal Singh *alias* Kulwant Singh, a hard/non-hardcore terrorist. The relevant extract of the statement in the original record, which is in Punjabi language, reads thus :—

> "2 ਇਸ ਵਕਤ ਬਾਰ-ਬਾਰ ਪੁੱਛਣ ਤੇ ਜਸਪਾਲ ਉਰਫ ਕੁਲਵੰਤ ਸਿੰਘ ਥਾਣੇਦਾਰ ਯੂਸਿਫ ਮਸੀਹ ਜੋ ਕੇ ਪਹਿਲਾ ਹੋਲਦਾਰ ਸੀ ਅੰਮ੍ਰਿਤਸਰ ਜਿਲੇ ਵਿਚ ਹੀ ਲੱਗਾ ਹੋਇਆ ਹੈ ਜਿਨਾਂ ਦਿਨਾਂ ਵਿੱਚ ਮੇਰਾ ਅਤਵਾਦੀਆਂ ਨਾਲ ਸੰਬੰਧ ਸੀ। ਸਾਨੂੰ ਪੁਲਿਸ ਦੀ ਨਕਲੋਂ ਹਰਕਤ ਬਾਰੇ ਦੱਸਦਾ ਰਿਹਾ ਸੀ। ਇਸ ਕਰਕੇ ਅਸੀਂ ਬਚਦੇ ਜਾਂਦੇ ਸੀ ਇਸ ASI ਯੂਸਿਫ ਮਸੀਹ ਦਾ ਹੋਰ ਵੀ ਜਥੇਬੰਦੀਆਂ ਨਾਲ ਮੇਲ ਜੋਲ ਹੈ ਜੋ ਇਨ੍ਹਾਂ ਜਥੇਬੰਦੀਆਂ ਨੂੰ ਪੁਲਿਸ ਦੀ ਨਕਲੋਂ ਹਰਕਤ ਬਾਰੇ ਦੱਸਦਾ ਰਿਹਾ ਹੈ। ਹੁਣ ਵੀ ਜਦ ਮੈਂ ਆਪਣੇ ਮੁਕਦਮੇ ਵਿੱਚ ਜੋ 1988 ਵਿੱਚ ਦਰਜ ਹੋਇਆ ਸੀ ਬਰੀ

ਹੋ ਕੇ ਆਇਆ ਸੀ ਤੇ ਇਸ ਦੇ ਕਹਿਣ ਤੇ ਸਹਿਰ ਛੱਡ ਗਿਆ ਸੀ। ਬਾਅਦ ਵਿੱਚ ਵੀ ਮੈਨੂੰ ਗਾਏ ਬਗਾਏ ਇਤਲਾਹ ਦੇਂਦਾ ਰਿਹਾ ਹੈ। ਹੁਣ ਹਾਲਾਤ ਠੀਕ ਹੋਣ ਕਰਕੇ ਮੇਰੇ ਰਿਸਤੇਦਾਰਾਂ ਤੇ ਪੁਲਿਸ ਦਾ ਅਪਰੈਸਰ (ਪ੍ਰੈਸਰ ?) ਪੈਣ ਕਰਕੇ ਪੇਸ ਹੋਇਆ ਹਾਂ। ਪਹਿਲਾਂ ਇਹ ਗੱਲ ਮੈਂ ਲੁਕੋ ਕੇ ਰੱਖੀ ਸੀ ਹੁਣ ਮੈਂ ਆਪਣਾ ਫਰਜ ਸਮਝ ਕੇ ਆਪ ਜੀ ਨੂੰ ਦੱਸ ਦਿੱਤੀ ਹੈ।"

(17) However, its English translation would read thus :

"2. At this time on repeated interrogation, Jaspal Singh *alias* Kulwant Singh disclosed that A.S.I., Yusif Masih who was earlier posted as Havildar and now posted in the District of Amritsar, used to inform them about the movement and activities of police. Due to this reason, they managed to escape. This A.S.I., Yusif Masih has links with other groups also and he had been informing them about the movement and activities of the police and even now when he (Jaspal Singh) was acquitted in case registered in 1988, he had left the city at his (Yusif Masih's) instance. He kept on giving information to him later also. He further disclosed that he has appeared on account of pressure from the police and his relatives and that he had concealed this fact earlier and that now he has disclosed this fact while considering it to be his duty."

(18) It was on the basis of the aforesaid statement made during interrogation of Jaspal Singh *alias* Kulwant Singh in case FIR No. 159/92, dated 28th December, 1992, that the competent authority, namely, Senior Superintendent of Police, Amritsar, has formed an opinion that holding of departmental inquiry against the petitioner-appellant would not be reasonably practicable and has accordingly invoked the provision of Article 311(2)(b). The requirement of the aforesaid provision has been stated in paragraphs 130, 133 and 135 of the 5-Judge Constitution Bench judgment of Hon'ble the Supreme Court rendered in the case of **Tulsiram Patel** *(supra)*. It has been held that the condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry contemplated by clause (2) of Article 311. The Constitution Bench further held that it was not possible to enumerate the cases in which it would not be reasonably practicable to

hold an inquiry. The decision to conclude that it is not reasonably practicable to hold an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is available on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the situation which has resulted in insertion of clause (3) under Article 311 making the decision of the disciplinary authority on this question final. 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. The Constitution Bench also observed that it is not necessary first to constitute the inquiry and only after the witnesses are attacked or Enquiry Officer is subjected to violence that the Government should form an opinion that it was not reasonably practicable to hold an inquiry. In para 132, the following pertinent observation has been made :

> "132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed *ex parte* and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

(19) The second condition necessary for 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 as contemplated by Article 311(2). In the absence of recording of reason in writing, the order dispensing with the inquiry and the order of penalty would both be void and un-constitutional. However, it has been clarified in para 135 that such reasons are not required to be necessarily communicated and it would be suffice if the same are recorded in the file.

(20) When we apply the aforesaid principles to the facts of the present case, it becomes patent that the order dated 17th June, 1993 (P-28) would satisfy both these requirements. During the course of arguments we asked the learned Additional Advocate General as to how the statement made by Jaspal Singh *alias* Kulwant Singh would have any relevance to the investigation of case FIR No. 159/92, dated 28th December, 1992. A satisfactory answer has been given by Mr. Sehgal revealing that Jaspal Singh *alias* Kulwant Singh was absconding and was not available for interrogation in the aforesaid case registered against him. In order to satisfy the authorities about his absence, he had revealed the mysterious activities of the petitioner-appellant. A perusal of the Zimni No. 14, dated 13th June, 1993, would make it patent that the appellant had close connection with various terrorist organizations as he used to pass on information to them with regard to movement of the police. The hard/non-hardcore terrorist like Jaspal Singh *alias* Kulwant Singh was the beneficiary and he also disclosed that there were other terrorist organisations who were beneficiary of the disclosure of information by the petitioner-appellant. It was, therefore, rightly concluded by the authorities that it was not reasonably practicable to hold an inquiry in accordance with Article 311(2) of the Constitution because of the links of the appellant-petitioner with the terrorist organisations.

(21) It is also pertinent to notice that their Lordships of Hon'ble the Supreme Court in two judgments have noticed the situation which was obtaining in the State of Punjab during the period 1990-1991. In **Mohinder Singh's case** *(supra)* inquiry was dispensed with on the report submitted by the Superintendent of Police, Intelligence. In para 6 it has been held that there were sufficient grounds for dispensation of regular departmental inquiry and the terrorists were not likely to depose against petitioner in that case

particularly when the terrorism was at its peak in Punjab at the time i.e. 1991. It is further pertinent to mention that the judgment rendered in **Mohinder Singh's** (supra) would also apply to the facts of the case in hand. There the Senior Superintendent of Police, Chandigarh, had dispensed with holding of inquiry by invoking Article 311(2)(b) by citing the reason that the witness would not come forward to depose against that officer in a regular departmental inquiry. In that case the order dispensing with the inquiry was based on a report submitted by the Superintendent of Police revealing gross misuse of power and extortion of money by illegally detaining and torturing innocent persons by that delinquent officer. He was regarded as a terror in the area while discharging his duty as Sub-Inspector of Police. The view of Hon'ble the Supreme Court is discernible from para 6 of the judgment, which reads thus :

> "6. Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the Court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the Court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent " intimidated the complainaint Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation and keeping in view that all this was happening in the year 1991, in the State of Punjab-the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

(22) Therefore, the issue in the present case in a way is similar to the one which has been decided by Hon'ble the Supreme Court in **Mohinder Singh's case** (supra). In the case in hand it was the Zimmi recorded by SI Gurbachan Singh of Police Station 'B' Division Amritsar in case FIR No. 159/92, dated 28th December, 1992, which has been made the basis for formation of an opinion as already observed in the preceding paras.

(23) However, the facts of **Kuldip Singh's case** (supra) are akin to the facts of the present case. Kuldip Singh was a Head Constable of Police and he was dismissed from service like the petitioner-appellant without holding an inquiry because the Senior Superintendent of Police has invoked second proviso (b) appended to clause (2) of Article 311 for dispensing with the inquiry opining that it was not reasonably practicable to hold such an inquiry in his case. After exhausting departmental remedy he lost before this Court. The Appellate Authority had found in **Kuldip Singh's case** (supra) that he was mixed up with the terrorists and he was supplying secret information of the police department to them, which created hindrance in its smooth functioning. He was interrogated in a case (FIR No. 219/1990) where he admitted to have links with the terrorists like Major Singh Shahid and Sital Singh Jakhar. Despite the fact that he was acquitted in case FIR No. 219/1990, the use of the aforesaid interrogation and his admission was not considered irrelevant for the purposes of concluding that inquiry was not reasonably practicable to be held. Their Lordships of Hon'ble the Supreme Court have gone to the extent that even if the confession has been made to the police or while in custody of the police, it would not be of much consequence as long as it is germane to the requirement of Article 311(2)(b) and inspires confidence. The view of Hon'ble the Supreme Court is evident from the perusal of para 11, which reads thus :

> "11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/ disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the

course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the Government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of *mala fides* levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied

with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the Disciplinary authority and the appellate authority."

(24) In view of the aforesaid we find that in the present case the condition that there are sufficient reasons, which are germane to the provisions of Article 311(2)(b), stands satisfied. Once it has been found, while investigating case FIR No. 159/92, dated 28th December, 1992, that Jaspal Singh *alias* Kulwant Singh had revealed that the petitioner-appellant was mixed up with the terrorists and was passing on secret information to them then no fault can be found with the order dated 17th June, 1993 (P-28). The report of the Senior Superintendent of Police, Amritsar dated 15th June, 1993 based on the interrogation has also been placed on record along with the affidavit dated 8th February, 2011, which reads as under :

"ASI Yunish Masih No. 2077/ASR has been found to be mixed up with terrorists. It is not practicable to hold regular departmental enquiry against him in public interest and as such it is dispensed with by virtue of power conferred upon me by Article 311(2) (b) of Constitution of India read with PPR 16 (1). ASI Yunis Masih No. 2077/ASR is hereby dismissed from services w.e.f. 15th June,1993 F.N."

(25) It was on the basis of the aforesaid report that in the order dated 17th June, 1993 it has been stated that the appellant used to supply secret information regarding movement of police department as well as paramilitary forces to the terrorists and, thus, it was not reasonably practicable to hold inquiry. The order dated 17th June, 1993 (P-28) reads as under :—

"Whereas, A.S.I. Yunis Masih No. 2077/ASR joined Police Department as Constable on 28th October, 1970.

Whereas, the secret information has been received from reliable sources that ASI Yunis Masih No. 2077/ASR is mixed up with the terrorist, as it was disclosed during investigation by a hardcore in case FIR No. 159 dated 28th December, 1992 under section 302/34 IPC, 25/54/59 A. Act, 3/4/5 T.D.P. Act, P.S. 'B' Division, Amritsar. During investigation, the accused (Hard Core Terrorist) disclosed that ASI Yunis Masih No. 2077/ASR used to supply secret information regarding movement of Police Department as well as Para Military Force to the terrorists.

Whereas, the retention of this A.S.I. in the Police Department is not desirable due to his prejudicial activities and the action under Article 311 of the Constitution of India read with P.P.R. 16.1 is taken and it is not reasonably practicable to hold the departmental enquiry which is dispensed with for the following reasons :—

1. That no public witness is likely to depose against him as he has links with the militants who are operating in Punjab.

2. The departmental enquiry will take a long time and till its completion his retention in the Police Force is risky and not in public interest.

Whereas, I, Hardeep Singh Dhillon, IPS, Sr. Superintendent of Police, Amritsar by virtue of the powers vested in me under Article 311 Constitution of India read with P.P.R. 16.1 dismiss ASI Yunis Masih No. 2077/ASR to-day."

(26) It is, thus, evident that even second condition that the reason in writing should be cited in the order, stands satisfied. On further examination of the original record the aforesaid fact is fully substantiated. Therefore, the view taken by the learned Single Judge deserves to be approved, which has upheld the order dated 17th June, 1993 (P-28) and the subsequent appellate order (P-29).

(27) The only issue which remains to be dealt with is whether Rule 16.38 was required to be followed in the manner projected by the learned counsel for the appellant. It is true that for holding a departmental inquiry, Rule 16.38 might be mandatory, as has been held by Hon'ble Supreme Court in the cases of **Charan Singh** (*Supra*) and **Raj Kumar** (*Supra*). However, it would not apply to cases where no departmental inquiry is to be held like the one in hand. In the instant case the question was not to hold a departmental inquiry but the question was to dispense with the inquiry by invoking the provisions of Article 311 (2) (b) of the Constitution. Therefore, it cannot be concluded that in a case like the one in hand, Rule 16.38 would have any application. There is nothing in Rule 16.38, which would indicate that even for dispensing with the inquiry under the provisions of Article 311 (2) (b), permission from the District Magistrate would be required. Rule 16.38 with which we are concerned contains 7 sub-clauses. For our purpose it is enough if we extract sub-clauses 1 to 4. Clauses 5 to 7 of Rule 16.38 relate to strictures passed by the High Court and other Courts against police officers and the manner of communication of the strictures to the District Magistrate and the Government. The relevant extract of Rule 16.38 reads as under :—

> **"16.38 Criminal offences by police officers and strictures by Courts-Procedure regarding.—**
>
> (1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Executive Magistrate.
>
> (2) When investigation of such a complaint establishes a *prima facie* case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily a Magistrate before whom a complaint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance.

(4) The Local Government has prescribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuses of the law with the object of victimising such officers or hampering investigation is rife. The District Magistrate will order that all petitions against police officers shall be presented to him personally. If he considers that these petitions are of a frivolous or fictitious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a Magistrate for judicial enquiry.

In the case of formal criminal complaints, the District Magistrate will arrange for all cases to be transferred from other courts to his own."

(28) A perusal of the Rule would show that whenever Superintendent of Police receives information regarding commission of an offence by the police officer then he should report the matter to the District Magistrate who may order a preliminary inquiry to be held. However, in the present case the question was to dispense with the departmental inquiry and it appears to us that the Rule did not oblige the authority to seek the sanction from the District Magistrate. Therefore, we find that Rule 16.38 would not apply to the facts of the present case.

(29) As a sequel to the above discussion, this appeal fails and the same is accordingly dismissed.

R.N.R.