the department they were rightly held to be entitled to the grant of similar pay scales. We do not find any illegality or error of jurisdiction in the judgment to this extent requiring any interference.

(5) The learned counsel for the appellant has, however, argued that in view of the fact that the Scheme under which the writ petitioners were employed had been abolished, the learned Single Judge was not justified in issuing direction to the appellant-State to adjust them in some other suitable employment. It has rightly been contended that by appointment in a Scheme, no right had been conferred upon the writ petitioners which could be enforced in a Court of Law and directions issued as has been done by the learned Single Judge. The implementation of such a direction may amount to the taking away the rights of some deserving citizens who may be more qualified and suitable for regular appointment or adjustment in the future. The direction of the learned Single Judge otherwise appears to be advisory and not mandatory. It is, however, made clear that the appellant-State shall not be under any legal obligation to provide job to the writ petitioners or adjust them in any other employment unless they otherwise apply and are found fit and suitable by the competent authority in accordance with the Rules.

(6) The appeal is accordingly partly allowed by up-holding the judgment of the learned Single Judge in sofaras the manner and direction regarding equal pay for equal work is concerned. The appellants are held not obliged to adjust the writ petitioners in any other employment unless the writ petitioners apply for the post and they are found fit for the same in accordance with the law applicable at the relevant time. No costs.

J.S.T.

Before Hon'ble N. C. Jain & S. S. Sudhalkar, JJ.

B. S. GURAYA,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

C.W.P. No. 4899 of 1993.

1st March, 1996.

Constitution of India, 1950—*Arts.* 226/227—*Army Rules,* 1970—*Proviso to Rule* 14—*Dismissal from service without show cause*

notice or holding of Court martial—Reasons given to dispense with show cause notice—Not valid—Order of dismissal set aside.

Held, that the inexpediency of issuing show cause notice as has been argued by the counsel for the respondents and as stated in the return is that the CBI requested GOC-in-C HQ Western Command that the list of assets may not be shown to the officer as the investigation was under progress and that it will not be in the interest of the case, in our considered view cannot be accepted on the face of it as it takes away the basic right of the petitioner to be heard before the action is taken.

(Para 18)

Further held, that it is not understood and even not explained as to how the statements which were incorporated or ultimately going to be incorporated in the charge-sheet to be submitted before the criminal court would, if disclosed, in the show cause notice could have been determental to the inquiry of the CBI. Nothing has been shown to us as to how they would have been deterimental to the interest of the investigation.

(Para 18)

Further held, that even from a bare reading of proviso(b) sub-rule (1) of Rule 14, it cannot be accepted that it was not expedient to give show cause notice to the petitioner or that it was not practicable in the above facts and circumstances to give the petitioner an opportunity of showing cause.

(Para 18)

Constitution of India, 1950—*Arts.* 226/227—*Army Rules*, 1970—*Proviso to Rule* 14—*Scope—Reasons for invoking proviso are justiciable.*

Held, that present is a case of the type where it cannot succesfully be maintained that the petitioner was not entitled to the grant of an opportunity before dismissal. It has been seen while discussing the case law that the reasons for invoking the proviso are justiciable.

(Para 18)

R. S. Randhawa, Advocate, for the Petitioner.

S. K. Pipat, Sr. Addl. Standing Counsel with Joginder Sharma, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sudhalkar, J.

(1) The petitioner who was serving as a Colonel at the Headquarter Western Command, Chandimandir was suspended from

duty on 17th August, 1990 and, thereafter,—*vide* order dated 27th January, 1993 he was dismissed from service. Before the dismissal, no enquiry was held and no show cause notice was given to him. Of course a criminal case was being investigated by the Central Bureau of Investigation against the petitioner. The petitioner challenges the order of his dismissal and also seeks promotion to the higher post which according to him he would have got if he had not been dismissed from service. The petitioner contends that his dismissal in the above manner is against the law and in the absence of any show-cause notice, he was not in a position to meet with the allegations against him because he was not aware of the same. He challenges the order of his dismissal on the ground that it is punitive in nature and that the dismissal could have been awarded only after the conviction by the court-martial. He also contends that there was no decision in regard to the impracticability or inexpediency of a trial against him. The petitioner further contends that he had no opportunity to prove his innocence and that he was condemned unheard. The petitioner further contends that because he was suspended, he could not be dismissed from service without being reinstated.

(2) The respondents in their written statement have denied the contentions made in the petition and have contended that the reasons which weighed with the Central Government in coming to the conclusion of in expediency of service of a show-cause notice are recorded in the case file and these may be perused by the court only, because the petitioner has no right to peruse the same. It is contended that the petitioner was blame-worthy of a very serious misconduct and that the action of the Government was justified. It is also stated in the written statement that the CBI had requested the GOC-in-C HQ Western Command that the list of properties may not be shown to the petitioner as the investigation was under progress and that showing of the same to him would not be in the interest of the case. It is contended that according to the CBI authorities the petitioner had amassed properties beyond his known sources of income and his character or conduct as an officer and gentleman was impugned.

(3) It is contended that it was found inexpedient to issue show-cause notice under section 19 of the Army Act (hereinafter referred to as 'the Act') and the Rule 14(1)(b) of the Army Rules (hereinafter referred to as 'the Rules') and that the reasons for coming to the conclusion of inexpediency of service of a show-cause notice stand recorded in the case file. It is further contended that the Central

Government was satisfied that it was a fit case to invoke the provisions of proviso (b) to Army Rule 14(1). It is contended that show-cause notice was not mandatory and can be dispensed with on the satisfaction of the Central Government for reasons to be recorded in writing that it is not expedient or reasonably practicable to give an officer the opportunity of showing cause and that this requirement is fully met in the present case. The respondents have also challenged the contention that an employee under suspension cannot be terminated.

(4) We have heard Mr. R. S. Randhawa, learned counsel for the petitioner and Mr. S. K. Pipat, learned Sr. Standing counsel for the respondents.

(5) It has not been shown to us as to how the dismissal can not take place when the employee is under suspension. No arguments are advanced on this point and, therefore, this contention is negatived.

(6) Before adverting to the arguments of the learned counsel for the parties, it will be appropriate to quote section 19 of the Act and Rule 14 of the Rules. The provisions read as under :—

> "19. Termination of service by Central Government Subject to the provisions of this Act and the Rules and Regulations made thereunder, the Central Government may dismiss or remove from service any person subject to this Act."

Rule 14 of the Rules reads as under :—

> "14. Termination of service by the Central Government on account of misconduct :
>
> (1) When it is proposed to terminate the service of an officer under section 19 on account of misconduct, he shall be given an opportunity to show-cause in the manner specified in Sub Rule (2) against such action :
>
> Provided that this sub rule shall not apply :
>
> (a) Where the service is terminated on the ground of conduct which has led to his conviction by a criminal court ; or
>
> (b) where the Central Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When, after considering the reports of an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the Officer by a Court-martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit in writing his explanation and defence :

Provided that the Chief of Army Staff may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government with the Officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the Officer's service in the manner specified in sub-rule (4).

(3) Where upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the Criminal Court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(4) When submitting a case of the Central Government under the provisions of sub Rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendations whether the Officer's service should be terminated, and if so, whether the Officer should be

(a) dismissed from service ; or

(b) removed from the service ; or

(c) called upon to retire ; or

(d) called upon to resign.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the Criminal Court, as the case may be, and the recommendations of the Chief of the Army Staff, may dismiss or remove the officer with or without pension or call upon him to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from service on pension or gratuity, if any, admissible to him."

(7) The facts admitted before us are that no court martial was held under the Act against the petitioner. No show cause notice was given to the petitioner before his dismissal. It is also not disputed that the petitioner was under suspension on the date of dismissal. It is also admitted that FIR is registered against the petitioner and investigation was going on and now even the challan has been presented before the criminal Court.

(8) After the arguments were heard by us and judgment was reserved, civil Misc. application No. 11825 of 1995 has been filed attaching with it the First Information Report and the charge-sheet. The application has been allowed by us. The First Information Report and charge-sheet would be read on the record as Annexure P-7 and P-8.

(9) Mr. R. S. Randhawa learned counsel for the petitioner has argued that the question whether on the facts and in the circumstances of a given case opportunity of show cause should be provided or not is justiciable. He has further argued that in view of the peculiar facts and circumstances of the present case, it can not be legally held that the petitioner was not entitled to the grant of an opportunity or that it was inexpedient or reasonably impracticable to give an opportunity to the petitioner to show cause as to why he should not be dismissed from service.

(10) If Rule 14(1) is read without the proviso, then an opportunity to show cause in the manner specified in sub Rule (2) has to be given to the employee. However, if the aforementioned Rule is read with proviso, the opportunity to show cause can be dispensed with in accordance with the proviso(b) to sub Rule (1) of Rule 14. In the present case the services of the petitioner have admittedly been terminated by invoking proviso(b) to sub-rule (1) of Rule 14 and, therefore, the question before us is whether the invoking of this provision was proper or not and if it is held that invoking was

proper then this petition fails and if it is held that the invoking of this proviso was not proper, the petition deserves to be allowed. At this stage we are not concerned with the question as to whether trial of the court-martial is inexpedient or impracticable because firstly the respondents have invoked proviso(b) of sub-rule (1) of Rule 14 and secondly, CBI is investigating a case and a charge-sheet has been lodged in the criminal court.

(11) Mr. Randhawa, learned counsel for the petitioner has cited before us the case of *Jaswant Singh* v. *State of Punjab* (1), in which it was held that it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

(12) Learned counsel for the petitioner has also cited before us the case of *Harbhajan Singh* v. *Ministry of Defence, Government of India and others* (2). In that case it is held that the discretion to dispense with holding of a Court-martial is justiciable.

(13) Mr. Randhawa has cited before us the case of *Ex. Major N. R. Ajwani and others* v. *Union of India and others* (3). It was held in that case by the learned Full Bench of the Delhi High Court that the concept of camo-uflage and the principle of lifting the veil would still be applicable in view of the dual provisions made in Sections 18 and 19 of the Army Act, notwithstanding the non-applicability of Article 311 of the Constitution.

(14) In reply Mr. Pipat learned counsel for Union of India has cited before us the case of *Chief of the Army Staff and others* v. *Major Dharam Pal Kukrety* (4). It is the case decided by the Hon'ble Supreme Court. In that case the court-martial proceedings were held against the permanent commissioned officer and the officer was held not guilty in the court-martial proceedings or in revision but the findings were not confirmed by the Chief of the Army staff. It was held by the Hon'ble Supreme Court, in that case, that in such circumstances to order a fresh trial by a Court Martial would be both inexpedient and impracticable and it was open to Chief of the Army Staff to take action under rule 14 despite the fact that the Officer was earlier tried by the court-martial and was acquitted. By this judgment it is well settled that the question of double jeopardy will not arise and that the provisions of Rule 14 can be invoked

(1) A.I.R. 1991 S.C. 385.
(2) 1982 (2) S.L.R. 782.
(3) 1994 (5) S.L.R. 692.
(4) 1985 (1) S.L.R. 658.

even in case where the officer is held not guilty by the Court-Martial proceedings. Another judgment of the Supreme Court which Mr. Pipat has cited is the case of *Lt. Col. Prithi Pal Singh Bedi* v. *Union of India* (5), reported. He has relied on headnote (F). It is held by the Hon'ble Supreme Court in that case that prior inquiry by court of inquiry is not obligatory for a trial by court-martial. Both these cases do not help the respondents because, the question for our decision is a narrow one namely whether the giving of the opportunity to show-cause as envisaged under rule 14 of the Rules was not expedient or reasonably practicable. We are not at present concerned with the question of inexpediency of the trial by the court-martial as envisaged in sub-rule 2 of the Rules.

(15) Mr. Pipat has also cited before us the case of *R. Viswan and others* v. *Union of India and others* (6), which deals with the powers conferred on the Central Government under section 21 of the Act to impose restrictions on fundamental rights. Section 21 of the Act provides for making rules restricting the rights as under :—

(i) to be a member of or to be associated in any way with trade union or labour union etc ;

(ii) to attend or address any meeting etc ; and

(iii) to communicate with the press or to publish or cause to be published any book etc.

The case of *R. Viswan and others* (supra) was, therefore, on different point altogether and has no relevance so far as the present case is concerned.

(16) The next judgment cited by Mr. Pipat is of *Bhagat Ram* v. *Union of India and others* (7). It was a case in which question of retirement of the petitioner etc. in that case on adverse reports was dealt with and it was held by the learned Single Judge that the officer of the BSF was not entitled to invoke even principles of natural justice under the general law of master and servant. In this case the learned Single Judge had placed reliance on the principle laid down in the case of *Lekh Raj Khurana* v. *Union of India* (8). It was held in that case by the Hon'ble Supreme Court that the case of the

(5) A.I.R. 1982 S.C. 1413.
(6) A.I.R. 1983 S.C. 658.
(7) 1981 (3) S.L.R. 686.
(8) A.I.R. 1971 S.C. 2111.

appellant in that case who was holding a civilian post which was connected with the defence and was paid salary from the defence estimates was fully covered by the judgment in the case of *Jugatrai Mahinchand Ajwani* v. *Union of India* (C.A. 1185 of 1965) in which it was held that an engineer in military service who was drawing his salary from defence estimates could not claim the protection of Article 311 (2) of the Constitution of India. However, it is also held in that case that the view of the High Court that the rules were not justiciable cannot be sustained and that it has also been held that the breach of statutory rule in relation to conditions of service would entitle the Government servant to have recourse to the Court for redress. It can be seen that in the present case, the provisions are made under the Act and the Rules and question to be decided is whether the provisions of dispensing with the notice of showing cause are rightly followed or not and, therefore, in view of the judgments of the Hon'ble Supreme Court including the one i.e. Chief of the Army Staff and others (supra), writ can be filed if the procedure laid down by the law is not followed or is wrongly followed.

(17) Mr. Pipat has also cited before us the case of *Jai Bharat Cold Storage and others* v. *State of Haryana and others* (9). That was a case under the Essential Commodities Act and it will not be proper for us to consider the said case for deciding the present case. The question of any provisions being *ultra vires* is not before us for being decided as can be seen from the reliefs claimed by the petitioner in the petition. Moreover it can be found from another case cited before us by Mr. Pipat i.e. *Union of India* v. *S. K. Rao* (10), that rule 14 of the Rules is held to be not *ultra vires* by the Hon'ble Supreme Court.

(18) Having given our thoughtful consideration to the arguments of the counsel for the parties and after going through various judgements cited at the bar, we are of the view that present is a case of the type where it cannot successfully be maintained that the petitioner was not entitled to the grant of an opportunity before dismissal. It has been seen while discussing the case law that the reasons for invoking the proviso are justiciable. The inexpediency of issuing show-cause notice as has been argued by the counsel for the respondents and as stated in the return is that the CBI requested GOC-in-CHQ Western Command that the list of assets may not be

(9) A.I.R. 1980 Punjab and Harayna 52.
(10) A.I.R. 1972 S.C. 1137.

shown to the officer as the investigation was under progress and that it will not be in the interest of the case, in our considered view cannot be accepted on the face of it as it takes away the basic right of the petitioner to be heard before the action is taken. If the petitioner had acquired the assets as mentioned in the list with Government of India or with CBI, dishonestly, he might well have explained as to how did he happen to acquire such assets, if a show-cause notice had been issued to him. The request as contained in Annexure R4/1 in our considered view can be no ground to dispense with the issuance of show-cause notice simply because the case was in the final stages of investigation and the very assets of the petitioner revealed that the same were disproportionate to known sources of income to the tune of Rs. 80 lacs. The mentioning of the fact that the list of assets be not formally shown to the petitioner in any show-cause notice or in any other communication with the petitioner as the case was under investigation and that the same will not be in the interest of the case, in our considered view, is legally untenable to dispense with the right of the petitioner to be granted an opportunity of showing cause against the proposed action. It is not understood and even not explained as to how the statements which were incorporated or ultimately going to be incorporated in the charge-sheet to be submitted before the criminal court would, if disclosed, in the show-cause notice could have been detrimental to the inquiry of the CBI. The allegations made against the petitioner in the charge-sheet could not have been kept secret. Nothing has been shown to us as to how they would have been detrimental to the interest of the investigation. In view of the above facts even from a bare reading of proviso (b) sub Rule (1) of Rule 14, it can not be accepted that it was not expedient to give show-cause notice to the petitioner or that it was not practicable in the above facts and circumstances to give the petitioner an opportunity of showing cause.

(19) Once the petitioner was going to be tried in a criminal court on the charges of corruption, it is not understandable as to how the case of the CBI would have been demaged by giving a show-cause notice to the petitioner. The CBI, probably never intended to convey that the petitioner should not be given a show-cause notice before dismissing him. It appears to us that the communication of the CBI as contained in Annexure R4/1 to the effect that the case was in the final stages of investigation and verified assts of the petitioner revealed a disproportion to known sources of income to the tune of Rs. 80 lacs and that the list of assets may not be formally shown to the accused in any show-cause notice or in any other communication with the petitioner as the case was still under investigation and further that any such communication would not be in the

interest of the case has been misunderstood by the respondents while taking the decision not to serve show-cause notice before dismissing him. In any case CBI requested the GOC-in-CHQ Western Command, Chandigarh not to do certain things as stated above as the case was still under investigation. The CBI must not have meant that that the petitioner should never be issued show-cause notice before the proposed action. Even if it is presumed for a moment that the State should not issue show-cause notice in view of Annexure R4/1 on 22nd July, 1992 when Annexure R4/1 was written by the CBI, the respondents could have waited till the time investigation was completed and thereafter show-cause notice could be issued. The GOC-in-CHQ Western Command could have written to the Superintendent of Police of the CBI, Chandigarh to complete the investigation expeditiously, in order to enable him to issue show-cause notice. For all these reasons, we are of the considered view that the order of dismissal without granting an opportunity to the petitioner deserves to be set aside.

(20) The question regarding giving effect to the promotion cannot be dealt with at this stage because by quashing dismissal order, the petitioner automatically does not get reinstatement in view of the fact that he was already under suspension when the dismissal order was passed. It is not in dispute that the writ petition challenging the suspension order was dismissed. Therefore, we do not deal with the question of promotion of the petitioner at this stage and keep it open to be decided if at all it is then required to be decided after the final outcome regarding the action against the petitioner.

(21) In the result the writ petition is allowed and the order dismissing the petitioner, annexure P-6 and the consequent letter conveying the order to the petitioner annexure P-4 are quashed. Rest of the prayers are rejected. No order as to costs.

J.S.T.

Before Hon'ble V. K. Bali, J.

RAJINDER KUMAR KHERA,—*Petitioner.*

versus

STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. 8540 of 1993

26th April, 1996

Constitution of India, 1950—Arts. 14, 226/227—Compassionate appointment—Appointment given to dependant of deceased employee