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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5629/2021

OM PRAKASH IRLA NO 19566061 .....Petitioner
Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA & ANR. .....Respondents
Through: Mr. Anshuman, Sr. PC with Mr. Vaibhav Sood, Adv. for UOI with Mr. Paramveer Singh, Law Officer BSF and HC. J.K. Mishra, BSF

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 12.11.2025

C. HARI SHANKAR, J.

Facts, and the *lis*

1. Following proceedings under Rule 20(2)[1] read with Rule 20(4)[2]

[1] (2) When after considering the reports on an officer's misconduct, the Central Government or the Director General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director-General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents if any, intended to be used against him) in cases where allegations have been investigated and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Director-General may with hold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

[2] (4) When submitting a case to the Central Government under the provision of sub-rule (2) or sub-rule (3), the Director-General shall make his recommendation whether the Officer's service should be terminated, and if so, whether the officer should be,—

(a) dismissed from the service; or
(b) removed from the service; or
(c) retired from the service; or
(d) called upon to resign.

of the Border Security Force Rules, 1969[3], the petitioner stands compulsorily retired from service by order dated 18 May 2021, passed by the Deputy Inspector General[4] (Pers) of the Border Security Force[5].

2. The incident which culminated in the compulsorily retirement of the petitioner from service took place on 2 February 2016, when the petitioner was posted in Bhuj. It was alleged, and has been found by the impugned order, that the petitioner had entered into extra marital intimate relations with one Const X[6]. It was further alleged that certain objectionable photographs, reflecting the petitioner in a compromising position with Const X were circulated on social media groups.

3. On the basis of the said allegations, a Staff Court of Inquiry[7] was directed *vide* order dated 4 February 2016, followed by an Additional Staff Court of Inquiry[8] *vide* order dated 30 June 2016. The petitioner, admittedly, participated in the SCOI as well as the Additional SCOI, which proceeded in compliance with the applicable Rules in that regard.

4. Following the SCOI and Additional SCOI, the file was put up to the Inspector General[9], BSF, who appended following remarks:

> "1. I partially agree with the findings and opinion of the court.

[3] "the BSF Rules" hereinafter
[4] "DIG", hereinafter
[5] "BSF", hereinafter
[6] Name withheld
[7] "SCOI", hereinafter
[8] "Additional SCOI", hereinafter
[9] "IG", hereinafter

2. In the month of Oct, 2013, Shri Om Prakash, 2IC, WW BSF Bhuj alongwith CT X, 182 Bn BSF (then 50 Bn SBF) had gone to Ludhiana to attend a marriage. After the marriage they got late and stayed in a hotel in Ludhiana where they got intimate with each other and had taken photographs of each other from the mobile phone of CT X. These photographs were saved in the micro SD Card of CT X which was later on stolen by someone from her mobile phone. Subsequently, these obscene photographs were circulated in social media. The relationship between Shri Om Prakash and CT X was consensual.

3. Although, the relationship between Shri Om Prakash, 2IC and CT X was consensual and nobody has made any complaint against Shri Om Prakash, 2IC but, having extra marital relation with CT X is not only grave misconduct on the part of an officer but also unbecoming of an officer and in general against the discipline of the force. On the other hand, CT X is also blameworthy for misconduct which is in general against the discipline of the force.

4. I, therefore, direct:-

i. Disciplinary action to be initiated against Shri Om Prakash, 2IC, WW Bhuj for abovementioned misconduct on his part which is in general against the discipline of the force.

ii. A case be taken up with HQ SDG (WC), Chandigarh for initiating. disciplinary action against CT X, 182 Bn BSF (then 50 Bn BSF) for abovementioned misconduct."

5. Following the aforesaid conclusions of the IG, BSF, orders were issued for Record of Evidence[10] on 14 October 2016, followed by Additional Record of Evidence[11] on 2 December 2016.

6. On the basis thereof, a show cause notice was issued to the petitioner on 19 March 2018, invoking Rule 20(2) of the BSF Rules, 1969, and alleging that the petitioner's relationship with Const X, and the circulation of the photographs in that regard in social media, had

[10] "ROE" hereinafter
[11] "Addl ROE" hereinafter

adversely affected the discipline of the force and the morale of female members of the force. Opining that such a misconduct by the petitioner was not acceptable in a disciplined force, the Show Cause Notice communicated the satisfaction of the DG[12], BSF, that the trial of the petitioner by a General Security Force Court[13] under Section 40 of the BSF Act was inexpedient and that further retention of the petitioner in the BSF was undesirable. Copies of the record of the SCOI, Additional SCOI, ROE and Additional ROE were provided to the petitioner and the petitioner was called upon to show cause as to why action for termination of his services for misconduct be not initiated against him under Rule 20(4) of the BSF Rules. Inasmuch as the submissions of Mr. Ankur Chhibber, learned Counsel for the petitioner have pivoted around the invocation, by the DIG, of Rule 20(2) of the BSF Rules, we deem it appropriate to reproduce paragraphs 6 and 7 of the notice dated 19 March 2018, thus:

> "6. Whereas, the Director General, BSF having gone through the evidence on record considering the matter in its entirety is of the opinion that your extra marital relationship with above said Ct X, and circulation of your obscene photographs in compromising position with said Ct X in social media as brought out above has not only adversely affected the discipline of the Force, but also adversely affected the morale of female members of the Force, whose entry is being encouraged in the Force as per Government's policy and such a grave misconduct by an officer of the rank of Second-in-Command cannot be accepted in a disciplined Armed Force ; and,
>
> 7. Whereas, in the facts and circumstances of the case, the DG BSF is satisfied that your trial by General Security Force Court for the said offence of committing an act prejudicial to good order and discipline of the Force u/s 40 of the BSF Act is inexpedient, but is of the tentative opinion that your further retention in the service Is undesirable; and."

[12] Director General
[13] "GSFC", hereinafter

7. The petitioner responded to the show cause notice.

8. Following the submission of the response by the petitioner to the aforenoted show cause notice, the DIG, by order dated 18 May 2021, held the response of the petitioner to the show cause notice not to be satisfactory and, accordingly, conveyed the concurrence of the Competent Authority to compulsorily retire the petitioner from service under Rule 20(4)(c) of the BSF Rules.

9. Aggrieved thereby, the petitioner has instituted the present writ petition before this Court.

10. Pleadings in the petition have been completed. Written submissions have also been filed.

11. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioner and Mr. Anshuman, learned Senior Panel Counsel for the respondents at length.

Rival Contentions

Submissions of Mr. Ankur Chhibber

12. Mr. Chhibber, with customary fairness, does not call upon this Court to embark on a re-appreciation of evidence. However, he has raised serious objections to the invocation, by the DIG, to Rule 20(2)

of the BSF Rules. Mr. Chhibber's contention is that there is no tangible reason for invoking the said Rule, which is meant to be invoked only in exceptional cases and cannot be treated as providing a *carte blanche* whereby, for no valid reason, the GSFC can be dispensed with. He submits that bringing an officer's employment to an end is a drastic action, and the dispensation of a GSFC prior thereto, has to be resorted to only in exceptional circumstances. He particularly submits that, having held ROE and an additional ROE, after evidence was on record, there was no justification for the respondents to dispense with the GSFC.

13. Mr. Chhibber has placed reliance, in this context, on the judgment of the Division Benches of this Court in **Yacub Kispotta v Director General BSF**[14] and **State of Rajasthan v Pankaj Kumar Chaudhary**[15] as well as the judgment of a Full Bench of the High Court of Manipur in **State of Manipur v Laishram Sushil Singh**[16].

14. Mr. Chhibber has also pointed out that there was no complaint regarding the conduct of his client or of the relationship between his client and Const X, which was completely consensual in nature, either by any relative of Const X or by the petitioner's wife. He further submits that, thereafter, relationship between the petitioner and his wife have also improved.

Submissions of Mr. Anshuman

[14] **2015 SCC OnLine Del 12437**
[15] **2021 SCC OnLine Del 2977**
[16] **2024 SCC OnLine Mani 579**

15. Mr. Anshuman, in response to the submissions of Mr. Chhibber, submits that no case for inference by this Court, within the parameters of Article 226 of the Constitution of India, can be set to exist in the present case. He draws particular emphasis to the evidence rendered by the petitioner as Witness No. 1 in the SCOI, from which the following paragraphs have been particularly cited:

> "Some photograph of mine with M/CT X are in circulation in social media i.e whatsapp. I came to know about this fact on 2nd Feb' 16. Mahila/CT X is presently posted to 50 Bn BSF at Khasa Amritsar. I have family relations with M/CT X and her parents. I have known them since last five years. We i.e myself and my family had been visiting their house in Talwandi Feozepur Punjab. Even her parents have been visiting my house in the BSF campus frequently. Both families have been celebrating festivals and functions together since last five years.
>
> Mahila/CT X has never been posted under my command or in same station. Regarding the photographs which went viral in the social media I would like to submit that I got intimate with M/CT X some two years back. It was consensual and I did not force her to be intimate with me. We took some selfies of that moment from her mobile phone. The photographs were saved it the micro SD card installed in her mobile phone. Approximately a month back I was informed by M/CT X that the micro SD card had been stolen from her mobile phone by someone, either from the barrack where she was putting up or from the Coy kote where she deposits the phone while going for duties. The person who stole the micro SD card from the phone has probably put the photographs on whattsapp, social media. I can only presume that SD card must have been stolen to malign M/CT X or to blackmail her. After the photographs became viral on whatsapp, I informed my wife about the about the complete episode and apologized to her. The matter has been sorted out with in the family.
>
> Mahila/CT X is unmarried and the intimacy was between two consenting adults. The photographs were taken from M/CT X's mobile only. I did not have any photographs in my mobile.
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> *****
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> Q. 1. What relationship do you have with M/CT X?
> Ans. My family has close family relations with M/CT X's family. We developed intimacy approximately two years back

when we stayed in a hotel in Ludhiana after attending a marriage.

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Q.3. When and where were these photographs, which have gone viral of whatsapp, taken?
Ans. M/CT X and self had gone to attend a marriage of her friend in Oct 2013 near Ludhiana. After the marriage we got late and stayed in a hotel in Ludhiana, where we got intimate with each other. It was consensual.

Q.4. Did your wife know about your relationship with M/CT X?
Ans. She did not know about my relationship with X till the photographs had gone viral in the social media and I informed her."

16. Mr. Anshuman submits that, in the face of the aforesaid admissions by the petitioner, there can be no question of any interference by this Court under Article 226 of the Constitution of India.

Analysis

17. We have considered the submissions of both sides with due seriousness.

18. We may observe, at the outset, that a member of a paramilitary, or military, force, is expected to display the highest standards of propriety, conduct, and rectitude. The nation looks up to him. A disciplined soldier on the field cannot afford to be a profligate off it. Discipline is the very *raison d' etre* of a member of the militia, and must inform his conduct in every sphere of life. High ethical and moral standards are required of a member of a military, or paramilitary force. The necessity of rectitude and propriety increases

proportionately with the ascendancy of the officer in the military echelons. An officer of questionable moral or ethical standards has no place in a military, or paramilitary, force.

19. Entering into an extra marital liaison is unacceptable from an officer of the Forces. An officer who cannot keep his impulses in check off the field cannot be entrusted the security of the nation. More empirically, it erodes public confidence in the moral standards of such an officer, which also, in its wake, affects his credibility as one to whom the security of the nation and its people can safely be entrusted.

20. With that preface, we may proceed to the *lis* before us.

21. Rule 20(2) of the BSF Rules permits the Central Government or DG to dispense with the requirement of holding a GSFC, where the Central Government or the DG is satisfied that the trial of the officer by the GSFC "is inexpedient or impracticable" but that the retention of the officer in the force is undesirable.

22. None of the decisions cited by Mr. Chhibber address, precisely, the scope of the expression "inexpedient", as employed in Rule 20(2) of the BSF Rules.

23. **Yacub Kispotta** dealt with a person who was not below office rank. As such, that case invoked Rule 22(2)[17] of the BSF Rules which, no doubt, is *pari materia* with Rule 20(2) thereof.

24. In **Yacub Kispotta**, too, an SCOI and an ROE were conducted. Thereafter, a show cause notice was issued to the petitioner Yacub Kispotta under Rule 22(2) of the BSF Rules proposing termination of his service on the ground that, in the opinion of the Competent Authority, trial by the GSFC was not reasonably expedient and practicable. The Division Bench, in paragraph 23 of its judgment, observed that though the decision as to whether to hold an inquiry was or was not reasonably practicable was within the domain of the decision making executive authority, that decision had to be based on objective facts. It also identified the limited duty of the Court in judicial review was restricted to considering whether the reasons that weighed with the authority in dispensing with the GSFC were germane and relevant. Thereafter, the Division Bench proceeded to distil the law laid down by the Supreme Court in **Union of India v Tulsiram Patel**[18], **Indian Railway Construction Co. Ltd. v Ajay Kumar**[19], **Kuldip Singh v State of Punjab**[20], **Union of India v Harjeet Singh Sandhu**[21], **Satyavir Singh v Union of India**[22] and

[17] (2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion its disclosure is not in the public interest.

[18] **(1985) 3 SCC 398**
[19] **2003 (4) SCC 579**
[20] **1996 (10) SCC 659**
[21] **2001 (5) SCC 593**
[22] **(1985) 4 SCC 252**

Sahadeo Singh v Union of India[23]. Following the reference to these decisions, the Division Bench concluded that the opinion of the Disciplinary Authority to the effect that the holding of the GSFC was not reasonably practicable was unsustainable, in para 27, 30 to 32 of the judgment, thus:

> "27. In the present case, the following objective facts emerge from an overall consideration of the materials, including the witnesses such as the BSF personnel examined in the RoE/SCOI and the independent witnesses:
>
> (i) 9 BSF personnel were deployed for election duty on the fateful day, i.e. 12.02.2000. Ordinarily, the Section strength was to be 11;
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> (ii) After reaching the site in the early hours of 12.02.2000, the BSF personnel, including some of the petitioners reconnoitered the area, i.e. the school building where the polling was to be held and its surroundings to determine the security of the polling booth;
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> (iii) The school building was in a low-lying area surrounded by hilly ground which contained bushes. The school was also surrounded by a thick crop growth. These inhibited visibility;
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> (iv) There were two drains - one at a lower level from where militants could hide and mount their attack. As such, the polling booth/building was vulnerable to attack.
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> (v) The polling was underway when militants, numbering around 100 or so, suddenly attacked and fired at the building from every angle. The polling station came under unrelenting heavy fire from the militants.
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> (vi) Within a few minutes, three BSF personnel were fatally wounded and died while retaliating. Two others, i.e. PWs-1 and 2 were seriously injured and fell down. The petitioners were the surviving BSF personnel who continued with the counterattack. All of them claimed to have run out of ammunition and were individually - at different points of time – were surrounded and beaten by the militants and their weapons were snatched from them.

[23] **(2003) 9 SCC 75**

(vii) The prosecution witnesses, i.e. PWs-4 and 10 and who reached the spot were told about the manner of attack and how the petitioners were deprived of weapons and ammunition. A prosecution witnesses, i.e. PWs-10observed the school building and found bullet marks all around. He also noticed bullet casings and shells lying at the places mentioned by the petitioners.

(viii) The petitioners' version about the failure to establish communication and the measures taken by them to counterattack the militants was corroborated by the independent testimony of villagers. It was also corroborated partly by the testimony of PW-9.

(ix) The petitioners were taken into close quarters custody on 05.07.2000and were kept in that condition for two years. Thus, the villagers who deposed had no cause to feel threatened by the petitioners; equally it could not be said that the villagers were induced to depose in their favour.

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30. If all the authorities were to be considered in the backdrop of the facts of the present case, *there cannot be any doubt that the sudden and inexplicable volte face of the BSF, from its earlier decision to hold a General Security Force Court, to altogether dispense with any inquiry and follow Rule 22 is utterly indefensible.* The only inkling as to why it was not reasonably practicable to hold an inquiry is that BSF states that its attempt to secure the presence of independent witnesses through the local police was not successful. This explanation, in the counter affidavit, and even on the record is less than credible, to say the least. The BSF at the outset was of opinion that a full-fledged inquiry into the incident was necessary, as evidenced by the fact that the four petitioners and two others, i.e. injured BSF personnel were kept in close arrest, under Rule 36. This procedure is mandatory wherever the charge contemplated is an offence under Section14- as the present case undoubtedly is. Thirdly, a SCOI was held and thereafter a Record of Evidence was conducted. Several witnesses deposed about the incident; they were cross examined. The petitioners' statements too were recorded, after administering warnings to them. Rule 47 mandates that in cases involving Section 14 violation, summary proceedings cannot be resorted to. The RoE and the SCOI proceedings showed that not only witnesses were available, but willingly deposed during these proceedings. These proceedings were held for almost a year. 13 BSF personnel deposed; the statements of eight others, mostly villagers who had witnessed the incident- either voters or others posted on election

duty, showed that there was no atmosphere of fear which could threaten them. Indeed, to avoid such a situation, the petitioners were kept under close arrest for two years.

31. The law thus, from **Tulsiram Patel** onwards is that while the competent authority can dispense with an inquiry if it is not reasonably practicable, that view should be grounded on reasons. The courts can exercise judicial review to decide whether there was any material to determine the reasonableness of such view. **Singasan Rabi Das**[24] is closest in the facts to the circumstances of the present case. The court rejected the view that holding an inquiry would have resulted in humiliation of the witnesses rendering them ineffective, was sufficient to say that it was not reasonably expedient to hold an inquiry. **Chandigarh Administration v Ajay Manchanda**[25] is authority for the proposition that vague inferences are insufficient for a sustainable opinion that inquiry is not reasonably practicable.

32. In the present case, the availability and willing participation of the witnesses in the RoE belies the BSF's assertion that it was not reasonably practicable to hold a Force Court. On the contrary, it was highly doubtful if the petitioners would have been held guilty at all, given what transpired during the inquiry especially taking into account the testimonies of BSF personnel and independent witnesses. The BSF appears to have acted on prejudice- a fact borne out by the circumstance that the two injured personnel who survived the attack, i.e. PW-1 and PW-2, too were kept under close arrest, but subsequently released. Their participation and role is not distinguishable from the role attributed to the petitioners. The BSF's prejudice and predisposition to say that the petitioners were some how culpable is apparently based on the fact that they were unharmed and not injured. The three dead BSF personnel could not tell any tales; the two surviving injured were spared after initial suspicion. However, in the case of the petitioners, since a full SCOI and RoE did not reveal anything damaging, and they were in fact not proceeded with after February, 2002, the BSF apparently felt that they had to be somehow got rid of."

25. Apart from the fact that the discussion by the Division Bench in **Yacub Kispotta** concentrated more on whether the holding of the GSFC could be treated as not reasonably practicable, rather than

[24] **Chief Security Officer v Singasan Rabi Das, (1991) 1 SCC 729**
[25] **AIR 1996 SC 3152**

whether it was inexpedient, we find a striking point of difference between the facts of that case and those before us. In **Yacub Kispotta**, a decision was taken to hold a GSFC, which was subsequently reversed, and a decision taken to dispense with the GSFC. The Division Bench has, in para 30 of the decision, specifically commented that "there cannot be any doubt that the sudden and inexplicable *volte face* of the BSF, from its earlier decision to hold a General Security Force Court, to altogether dispense with any inquiry and follow Rule 22 (was) utterly indefensible". We, therefore, do not regard **Yacub Kispotta** as a decision which can be of assistance to us in examining the justifiability of the decision of the respondents, in the present case, to treat the holding of the GSFC against the petitioner to be inexpedient.

26. **Pankaj Kumar Chaudhary**, which was also cited by Mr. Chhibber, is not a case where there was any dispensation with the inquiry against the concerned employee. Mr. Chhibber, however, submits that the said case is a pointer for the submission that, even if the allegations against the petitioner were to be treated as proved, it was not a case to compulsorily retire him from service. Given the seriousness of the allegations against the petitioner in the present case, which included taking of objectionable photographs, we are unable to analogize this case with **Pankaj Kumar Chaudhary**.

27. Insofar as the decision of the Full Bench of the High Court of Manipur in **Laishram Sushil Singh** is concerned, Mr. Chhibber has

placed reliance on paras 5, 6, 51, 52, 55 to 58, 61, 62 and 65 of the said decision, which we may reproduce thus:

> "5. The writ petitioner joined service as Sub-Inspector Police in the State Police Department in the year 2007. The Police Department, Manipur vide their confidential letter No. U/2 (47/H) PHQ-2015/11529 dated 23-12-2015 submitted a proposal to the State Home Department for dismissal of service of the writ petitioner, Shri. L. Sushil Singh, Sub-Inspector of Police who was posted at CID (Technical), Manipur by invoking provision of Article 311(2)(c) of the Constitution of India for his involvement in subversive activities and his association with the banned unlawful terrorist organization People's Liberation Army/Revolutionary People's Front (PLA/RPF in short) despite being a member of a discipline Police Force in the interest of the security of the State.
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> 6. In the proposal for dismissing service of writ petitioner under Article 311(2)(c), the Secret Report of the Police Department giving details of his arrest while posting at Chief Minister's Bungalow and registration of FIR No. 21 (1) 2015 u/S 38(1) UA(P) Act and Section 5 (b) Official Secrets Act, 1923 and details of his connection with the banned underground organization, PLA/RPF and his continuing involvement in subversive activities which are prejudicial to the security and sovereignty of the country were stated.
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> 51. On hearing the submissions made by the learned counsel appearing for the respondents and on perusal of the Hon'ble Supreme Court's judgments relied upon by the learned counsel, we are of the view that there is force and merit in the submissions made by the learned counsel appearing for the respondents and such submissions are reasonable and reliable in the facts and circumstances of the case and the observation made in the relied judgments of the Hon'ble Supreme Court are all applicable and supported the submission made by the learned counsel appearing for the respondents.
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> 52. The Governor could not have arrived at the subjective satisfaction that it was not expedient to hold inquiry as contemplated under Article 311(2) second proviso clause (c) of the Constitution of India on the basis of the recommendation of the Committee of Advisors which was based purely on allegations, as such the decision to dispense with departmental inquiry and satisfaction of the Governor is open to judicial review, as the

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

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

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

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

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

58. Mention is made here again that this decision was taken after the lapse of two and half years and the inquiry was initiated and concluded after filing the written argument from the part of the writ petitioner/respondent meaning that departmental inquiry had then reached its final stage and abrupt volte-face of the disciplinary authority with apparent no new development in between.

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

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

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

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

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

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

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

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

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

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

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

"9. As regards action under clause (c) of the second proviso to Art. 311(2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in

the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311(2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank, nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation, the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide, or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide, or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not."

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

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

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

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

62. The Hon'ble Supreme Court observed in **Union of India v Tulsiram Patel** at Para No. 130, 133 & 134 that—

> *"*130……..*It is because the disciplinary authority is the bestjudge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.*
>
> 133. *The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*
>
> 134. *It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was*

satisfied that it was not reasonably practicable to hold any inquiry."

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

(Emphasis in the original report)

28. The decision in **Laishram Sushil Singh** is clearly of no assistance in the present case. That case dealt with dispensation with an inquiry in terms of clause (c) of the second proviso to Article 311(2)[26] of the Constitution of India, in which the decision of the President or the Governor to the effect that the holding of the inquiry was not expedient could only be taken "in the interest of the security of the State". The provision is, therefore, strikingly dissimilar to Rule 20(2) of the BSF Rules, which does not in any way curtail the discretion of the Central Government or other executive authority in treating the holding of the GSFC as inexpedient or impracticable.

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[26] **311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State** –

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(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:

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Provided further that this clause shall not apply—

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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.

29. As such, we can derive no assistance from the decision of the Full Court in **Laishram Sushil Singh**.

30. The expression "inexpedient" is, in our considered opinion, much wider than the expression "not reasonably practicable". In **Tulsiram Patel**, the Supreme Court adopted, with approval, the definition of "expedient", as contained in Webster's Third International Dictionary, as "characterised by suitability, practicability and efficiency in achieving a particular end: fit, proper, or advantageous in the circumstances". In **State of Gujarat v Jamnadas G. Pabri**[27], the Supreme Court observed as under:

> "In one dictionary sense 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic, 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conductive to special advantage rather than to what is universally right'"

Black's Law Dictionary defines "expedient" as meaning "appropriate and suitable to the end in view – whatever is suitable and appropriate in reasons for the accomplishment of a specific object". This definition was approvingly cited by the Supreme Court in **Amarjit Singh v State of Punjab**[28]. In similar terms, the Supreme Court in **State of Punjab v Khem Chand**[29] defined "expedient" as meaning "useful for affecting a desired result, fit or suitable for the purpose".

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[27] **(1975) 1 SCC 138**
[28] **(2010) 10 SCC 43**
[29] **(1974) 1 SCC 548**

31. Though obviously distinguishable, insofar as the issue in controversy was concerned, an instructive authority in this regard is the decision of the Supreme Court in **Dalbir Singh v State of Haryana**[30]**.** The Supreme Court, in that case, was concerned with Section 4 of the Probation of Offenders Act, 1958[31], which read thus:

> "7. The conditions for applying Section 4 of the PO Act have been delineated in the commencing portion of the provision in the following words:
>
> > "4. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct…."

32. While explaining the ambit of the expression "expedient" as employed in Section 4 of the PO Act *supra,* the Supreme Court ruled as under:

> "10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence…". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

33. There is no reason why the basic principle behind the understanding of the expression "expedient" as employed in Section 4 of the PO Act should not be applied while construing the expression

[30] **(2000) 5 SCC 82**
[31] the PO Act

"expedient" as employed in Rule 20 (2) of the BSF Rules. In either case, the concerned person has committed a misdemeanour. The Supreme Court was, in **Dalbir Singh**, dealing with a provision which envisaged his release on probation on good conduct, for which discretion was vested with the Court to decide whether such release would be "expedient". Rule 20(2) of the BSF Rules also envisages "expediency" as being one of the tests to be applied while deciding whether to proceed against an officer for termination without holding a GSFC.

34. Applying the principle in **Dalbir Singh**, the nature of the misdemeanour committed by the officer is, therefore, a relevant consideration while deciding whether it would be "expedient" to hold a GSFC.

35. The expression "expedient" as employed in Section 51 of the West Bengal Town and Country (Planning and Development) Act 1979, was given a wide construction, in **Hotel Sea Gull v State of W.B**[32], in which the expression was understood as meaning "suitable and appropriate".

36. The following passages from **Hotel Sea Gull** and **Amarjit Singh** are also instructive in this regard:

> From **Hotel Sea Gull**
>
> "25. Under Section 51 the planning or the development authority has been clothed with the power to revoke or modify a

[32] **(2002) 4 SCC 1**

development plan prepared or under preparation, to the extent it is necessary, if it appears and is expedient to do so. The circumstances and the reasons under which the plan can be revoked or modified have not been spelt out. It is left to the discretion of the authority. The expression "expedient" employed is the key word in this section. The word "expedient" has not been defined under the Act. According to *Webster's Encyclopaedic Unabridged Dictionary of the English Language* "expedient" means "tending to promote some proposed or desired object"; "fit" or "suitable for the purpose"; "proper under the circumstances". In *Words and Phrases* (Permanent Edn.), Vol. 15-A, Evidence-Eyewitness, the word "expedient" has been described as when used as an adjective as "apt" and "suitable to the end in view"; "furthering, or adapted to further, what is purposed"; practical and efficient; as, an expedient change of policy; an expedient solution of a difficulty, hence, advantageous. The word "expedient" occurring in the statute authorising modification, revocation under the circumstances would comprehend whatever is suitable and appropriate for any reason for the accomplishment of the specified object."

From **Amarjit Singh**

"31. The term "expedient" appearing in Section 178 of the Act has not been defined. *Black's Law Dictionary*, however, assigns the expression "expedient" the following meaning:

> "Appropriate and suitable to the end in view - Whatever is suitable and appropriate in reasons for the accomplishment of a specified object."

32. The term "expedient" has fallen for interpretation before this Court in several cases. In **State of Gujarat v Jamnadas G. Pabri** this Court was interpreting the provisions of Section 303-A of the Panchayats Act as amended by the Gujarat Panchayats (Amendment) Act 8 of 1974. The question was whether satisfaction of the State Government as to the expediency of holding elections for the reconstitution of a panchayat was amenable to judicial review. Sarkaria, J. speaking for the Court observed:

> "12. … An analysis of Section 303-A(1) would show that before a declaration referred to in that sub-section can be made, two requirements must be fulfilled: (*1*) existence of a situation by reason of disturbances in the whole or any part of the State; (*2*) the satisfaction of the State Government

> relatable to such a situation, that it is *not expedient* to hold elections for the reconstitution of a Panchayat on the expiry of its term. The first requirement is an objective fact and the second is an opinion or inference drawn from that fact. The first requirement, if disputed, must be established objectively as a condition precedent to the exercise of the power. The second is a matter of subjective satisfaction of the Government and is not justiciable. Once a reasonable nexus between such satisfaction and the facts constituting the first requirement is shown, the exercise of the power by the Government, not being colourable or motivated by extraneous considerations, is not open to judicial review. Thus the question that could be objectively considered by the Court in this case was. Did a situation arising out of disturbances exist in the State of Gujarat on the date of the impugned notification?"
>
> (emphasis in original)
>
> 33. Dealing with the word "expedient" appearing in Section 303-A this Court observed:
>
> > "21. … Again, the word 'expedient' used in this provision, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see *Webster's New International Dictionary*)."
>
> 34. The Court in **Jamnadas** declared that Section 303-A had been designed to enable the Government to get over a difficult situation surcharged with dangerous potentialities, and that the Court must construe the aforesaid phrases in keeping with the context and object of the provisions in their widest amplitude."

37. The decision that holding of a GSFC is inexpedient, can, therefore, be taken in various circumstances. We cannot restrict these circumstances only to circumstances of impracticability as, in that case, the separate stipulation of inexpediency as a ground for dispensing with a GSFC would be rendered redundant. Where the legislature has consciously provided for two circumstances in which

the holding of a GSFC could be dispensed with, that legislative decision has to be treated as deliberate, and full scope and ambit has to be granted to both expressions.

38. The allegations against the petitioner were extremely serious. It is not merely a case of a consensual relationship with another woman officer, while being married, which would have been bad enough. The petitioner also took compromising photographs of the liaison. We are not entering, at this point, into how the said photographs made their way to social media. Suffice it to state that the very act of entering into such a liaison with another female officer, and of taking photographs of the incident, in such a manner as could enable them to be leaked and circulated in the social media, was by itself sufficient for the executive authorities to arrive at the subjective decision that the holding of a GSFC was inexpedient.

39. Besides, the extracts from the evidence of the petitioner who deposed as PW-I in the SCOI, reveal that the petitioner was certainly not an officer who could be allowed to continue with the Force. The admissions by the petitioner himself make him out to be a person of questionable moral standards. If, in respect of such a person, the respondents took a considered opinion not to hold a regular GSFC, we cannot treat it as a decision which justifies interference within the limited parameters of Article 226 of the Constitution of India.

40. We may note in this context that the petitioner had been given full and adequate opportunity during the holding of the SCOI and the

COI. Even thereafter, the petitioner was given an opportunity by way of a show cause notice to which he responded. It is not, therefore, as though the petitioner was condemned unheard.

Conclusion

41. In view of the aforesaid facts and circumstances of this case, we find ourselves unable to come to the aid of the petitioner. The writ petition is therefore devoid of merit and is accordingly dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 12, 2025*/aky/dsn/ar*