

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5480/2001

MUKH RAM YADAV & ORS. .... Petitioner  
Through Mr.R.N. Mahlawat with Mr.Gagandeep Sharma,  
Advocates.

versus

UOI & ORS. .... Respondent  
Through Ms.Richa Kapoor, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE DR. MUKUNDKAM SHARMA**

**HON'BLE MS. JUSTICE REVA KHETRAPAL**

**ORDER (Oral)**

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**21.03.2006**

This writ petition is directed against the order dated 18.11.2000 issued by the Deputy Inspector General of Police, CRPF, Bhopal (M.P.). In exercise of the powers conferred upon him by sub Rule (cc) (ii) of Rule 27 of the CRPF Rules, 1955 read with clause (b) of clause (2) of Article 311 of the Constitution of India and also in exercise of powers vested in him under Rule 27(a) of CRPF Rules, 1955. The petitioners herein filed their appeal as against the aforesaid orders which were dismissed. Both the aforesaid orders are under challenge in this petition. Petitioners were deployed to nab the militant outfit namely NDFB. The party was under the overall command of Inspector Mukh Ram Yadav, who is petitioner No.1 herein and they were fully equipped with arms, hand grenades and other ammunitions. The said platoon left for the place of incident without any guide as Inspector Mukh Ram Yadav was familiar with the area, but did not have the

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exact knowledge of location of militants. When the platoon reached the Bandh of irrigation canal, it was fired upon by militants consequent upon which two of the constables of the platoon were killed at the spot and one constable sustained bullet injuries to which he succumbed as he was bleeding profusely and he was not attended to or evacuated timely. It is alleged by the respondents that instead of tactically and effectively counter attacking the militants, petitioner No.1 himself along with his personnel ran away from the place of incident, leaving behind the killed and injured, as a result of which injured constable Ram Prakash succumbed to his injuries due to excess bleeding. This act of cowardice of the petitioner No.1 and his men allowed the militants to take away with them the weapons of the dead/wounded. In that view of the matter and alleging lack of action and tactically mishandling of the situation and professional incompetence, action was taken against the petitioners under the provisions of Sub Rule (cc) (ii) of Rule 27 of the CRPF Rules, 1955. While doing so the competent authority recorded the following reasons as to why it was not reasonably practicable to hold a regular departmental enquiry:-

“(a) The incident occurred in a remote terrorist affected area of Assam, thus the crucial and material witnesses will not be available to establish the charges. The entire evidence in the enquiry will be consisting of the same force members of the platoon who ran away from the scene of incident. Holding such an enquiry would be highly prejudicial to the general interest and discipline of the force.

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(b) It will not be possible to locate the state witnesses as no civilian was there at the site of incident and those in the village had run away. The other witnesses may be extremists themselves, whose statement can not be recorded. The third possible witnesses are from the platoon/Assam Police Commandos who were involved in the incidents and ran away from the scene. This is also ruled out as all of them are hands in glove and can never be expected to come out with the truth.

(c) The conduct of Departmental Enquiry takes its own time and its delay in finalisation will only demoralize the local public, who now has the perception of the security forces running away in their encounter with the extremists, thus creating a high degree of sense of insecurity among the locals.

(d) A quick and correct decision will definitely act as a deterrent to other force personnel.

(e) In addition, the evidence of other Police personnel of Assam would only be peripheral and cannot relate to all the charges. Such evidence might be assailed in the court of law, making a mere farce of an enquiry.

(f) There would be various difficulties and impediments in the holding of the enquiry leading to a situation jeopardising the life and security of loyal members of the force and enquiry officer."

The aforesaid action on the part of the respondents is under challenge in this petition. Counsel for the petitioner has submitted before us that this is not a case where an enquiry should have been dispensed with, for, according to him, witnesses were available and there was no reason as to why holding of the enquiry should have been

dispensed with by the respondent. In support of his contention, he has relied upon a decision of the Supreme Court in Chief Security Officer & Ors. Vs. S. Rabi Das (1991) SCC 729. Counsel appearing for the respondent, however, has submitted before us that the aforesaid reasons which have been given for dispensation of the enquiry are cogent and relevant and that the action taken is valid and legal.

It is to be noted at this stage that Article 311 of the Constitution of India makes it obligatory for the disciplinary authority to institute an enquiry against a delinquent officer for his misconduct. It is laid down in the Constitution that no person who is a member of the Civil Service of the Union or State shall be dismissed or removed or reduce in rank without holding an enquiry in which he has been informed of the charges levelled against him and without giving reasonable opportunity of being heard in respect of those charges. Exceptions under Article 311 are provided in the nature of clauses (a), (b) and (c), whereunder an enquiry is not required to be conducted by the disciplinary authority before passing an order either dismissing or removing from service or reducing in rank a member of the civil service. Article 311 (2) (b) is also one of such exceptions wherein it is provided that an enquiry which is required to be instituted under Article 311 (2) could be dispensed with by the disciplinary authority if it is found by him for reasons to be recorded that it is not reasonably practicable to hold an enquiry as against the delinquent officer. It is settled law that while taking action under the aforesaid

provisions, reasons are to be recorded by the disciplinary authority as to why it is not practicable to hold an enquiry.

A bare reading of Sub Rule (cc) (ii) of Rule 27 of the CRPF Rules, 1955 makes it crystal clear that the said Rule is also in the nature of an exception such as provided for under Article 311 (2) clauses (a) (b) and (c) of the Constitution of India, and is more or less similar to Article 311 (2) (b). Consequently, there cannot be any dispute that in an appropriate case the disciplinary authority can exercise the aforesaid power dispensing with the holding of an enquiry when the disciplinary authority is satisfied for reasons to be recorded that it is not reasonably practicable to hold an enquiry. The aforesaid reasons which are to be recorded have to be cogent and reasonable and also sufficient. The issue, therefore, which falls for our consideration is whether the reasons recorded by the competent authority to dispense with holding of an enquiry in the present case could be said to be reasonable, valid and sufficient.

Having perused the records of the present case and upon going through the reasons for the dispensation of an enquiry which <sup>are</sup> ~~have~~ extracted hereinbefore, it cannot be said that the said reasons are in any way unreasonable or arbitrary. It is specifically stated therein that no witness would be available even if it was ordered to hold a departmental enquiry as against the petitioners. The witnesses were either the members of the platoon of the petitioners which was led by the petitioner No.1, or the Assam

Police Personnel who had also fled away from the place, or the villagers who had <sup>also</sup> fled away from the place of occurrence even prior thereto. It is clearly indicated from the reasons that no witness would be available who would come and depose regarding the misconduct of the petitioners, even if the holding of an enquiry in respect of the aforesaid allegations was ordered. Upon perusal of the grounds recorded, we find that the grounds given are cogent, reasonable and sufficient and consequently order passed by the competent authority for dispensing with the enquiry does not call for any interference. In our considered opinion, the decision relied upon by the counsel appearing for the petitioner is distinguishable on facts. In the said case, the witnesses were available, but the reasons given for not examining the said witnesses were found to be totally insufficient in law. On the face of it, the facts of the said cases are distinguishable and are not applicable to the facts and circumstances of the present case. Accordingly, we hold that the impugned action of the respondents does not suffer from any illegality or irregularity. We find no merit in this petition, and the same is accordingly dismissed.

  
DR. MUKUNDAKAM SHARMA, J

  
REVA KHETRAPAL, J

MARCH 21, 2006

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