**Serial No. 30**
**Regular List**

**HIGH COURT OF MEGHALAYA**
**AT SHILLONG**

WP(C) No. 89 of 2020 Date of Order: 17.12.2021

Shri. Sanjeeb Ch. Marak Vs. State of Meghalaya & Ors.

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. Z.E. Nongkynrih, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

# JUDGMENT AND ORDER

1. The brief facts of the case is that the petitioner was appointed as a Constable in 6th Battalion of Meghalaya Police, and following the completion of training, he was serving as Constable BNC in Meghalaya Police Department. While on duty, the petitioner was arrested under Section 120 (B)/123/166/217 of the Indian Penal Code of 1860 (herein referred to IPC) read with Section 16/18/39 of the Unlawful Activities (Prevention) Act of 1967, (herein referred to UAPA), whereafter, the petitioner was removed from service by invocation of Article 311 (2)(b) of the Constitution of India.

Aggrieved by the said impugned order, the petitioner has approached this Court under Article 226 of the Constitution praying for quashing the impugned order and for reinstatement into service.

2. Heard learned counsel for the parties.

3. Mr. K.C. Gautam, learned counsel for the petitioner submits that Article 311(2) which was invoked against the petitioner, provides a safeguard against whimsical and arbitrary action of the appointing authority against removal from service without holding an enquiry and without providing the delinquent employee with an opportunity to put up a defense. Learned counsel submits that there must be subjective satisfaction of the authority concerned to the effect that, an enquiry which cannot be practically held should be based on tangible materials and the reason to dispense with such an enquiry must be recorded in writing. In the instant case, the learned counsel contends that the subjective satisfaction based on materials to be recorded in writing is non-existent, and this aspect is required to be corrected by this Court.

4. Mr. K.C. Gautam, learned counsel submits that the impugned order of dismissal from service, is based on his arrest in connection with Mendipathar P.S. Case No. 262 (12) of 2015 under section 120 (B)/123/166/217 IPC, R/w section 16/18/39 of the Unlawful Activities (Prevention) Act, and that the said case is yet to be charge-sheeted. He further submits that there is no material whatsoever to implicate the writ petitioner and that he has been falsely accused of the offences. Learned counsel also contends that, the bare mention in the impugned order that the office has been communicated about the petitioner's involvement in supplying information to a militant organization namely GNLA, is not

sufficient to constitute subjective satisfaction to dispense with holding an enquiry as provided under the proviso to Article 311 (2) of the Constitution of India. It is further submitted that, the right conferred under Article 311 cannot be dispensed with arbitrarily in a routine manner, nor can it be used as an alternative or a short-cut, to dispense with a regular enquiry. The learned counsel submits that the failure on the part of the respondents to record the reasons for dispensing with the domestic enquiry, vitiates the impugned order of dismissal and renders the same not tenable in law and has resulted in the violation of the Principles of Natural Justice. In support of his submissions, learned counsel has placed reliance on the following cases:

1) ***Union of India versus Tulsiram Patel AIR 1985 SC 1416.***
2) ***Jaswant Singh versus State of Punjab (1991) 1 SCC Pg 362.***
3) ***Reena Rani versus State of Haryana & Ors. (2012) 10 SCC Pg 215.***
4) ***Tarsem Singh versus State of Punjab & Ors. (2006) 13 SCC Pg 581.***
5) ***Sudesh Kumar versus State of Haryana & Ors. (2005) 11 SCC Pg 525.***
6) ***R.C. Lalrinthanga versus State of Mizoram & Ors. (2000) 1 GLR Pg 557.***

5. The cited decisions as placed by the learned counsel for the petitioner are on the same vein that is reasons to be ascribed for dispensation with a regular enquiry and the duty upon the disciplinary authority to show why it is not reasonably practical to hold an enquiry. The learned counsel while closing his arguments has reiterated his earlier submissions and prays that the impugned order of removal be set aside and quashed.

6. Mr. B. Bhattacharjee, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA for the State respondents submits that Article 311(2) provides an exception as to when holding of a departmental enquiry as provided under Article 311 will not apply. Learned counsel submits that the key words of the second proviso of Article 311(2), that 'this clause shall not apply' is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an enquiry under Article 311(2), in cases where clause (b) applies. He further submits that, when in interest of security of the State, it is not expedient to hold an enquiry, it is in public interest and public good, that the punishment be summarily imposed upon the delinquent public servant.

7. Learned counsel further submits 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 the enquiry as contemplated by Article 311(2), and that the same, is a matter of assessment by the disciplinary authority. Learned AAG contends that reasons for dispensing with the enquiry 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. He submits that each case must be judged on its own merits and though the constitutional requirement is that the reason be recorded in writing, there is no obligation to communicate the reason to the Government servant. In the case of the petitioner, he submits as given in the affidavit, it had been communicated to the disciplinary authority that the petitioner had confessed to supplying information and that he had links with GNLA militants. It was in this context, that owing to the gravity of his actions, the petitioner thereafter was removed

from service due to his links with the banned militant outfit by invoking Article 311(2)(b), and due to the prevailing situation at that time, where there was loss of lives of police personnel and civilians due to the activities of the GNLA, it was not reasonably practicable to hold the inquiry as the security and sovereignty of the State was at stake. The learned AAG had also invited the attention of this Court to the statements in the affidavit to other incidents of ambush, killing and abduction which was suspected to be caused by the alleged involvement of passing on of information to the GNLA by the petitioner.

8. The learned AAG submits that there is no infirmity or illegality in the dismissal of the petitioner and the writ petition deserves no consideration. The records pertaining to the case has also been made available to this Court by the learned AAG.

9. I have heard learned counsel for the parties. The only short question involved herein is the question of subjective satisfaction of the respondents in issuing the order of dismissal under Article 311(2)(b) of the Constitution of India. I have perused the impugned order dated 15.01.2016, which reflects that the said order has been based on the report which had been provided to the disciplinary authority which had also resulted in the registration of the case against him being Mendipathar P.S. Case No. 262 (12) of 2015 under section 120 (B)/123/166/217 IPC, R/w section 16/18/39 of the Unlawful Activities (Prevention) Act. On an appeal by the petitioner, the Appellate Authority had examined in detail the Confidential Report received from the concerned Superintendent of Police about the petitioner being in touch with the militants and also found the charges that he was having links with the GNLA (Garo

National Liberation Army) to be substantiated. The fact that, holding of an inquiry was not feasible, has also been noted in the appellate order.

10. This Court has also perused the records which reflects that the subjective satisfaction arrived at by the disciplinary authority is based on a confession of the petitioner's links with the militant outfits and especially the factum of passing on sensitive information which are recorded in detail in the original records. Therefore, though the dismissal order may be cryptic, the contention of the petitioner that there was no subjective satisfaction in arriving at the said decision is not borne out by the materials on record. Further, the appellate order has touched upon both aspects i.e., the satisfaction and the feasibility of holding an enquiry, which in the opinion of the Court has satisfied the conditions stipulated by Article 311(2)(b).

11. In view of the reasons aforementioned, no illegality or any cause for interference by this Court has been made out by the petitioner and as such, the writ petition being without any merit is accordingly dismissed.

12. Records to be returned forthwith.

13. No order as to costs.

**Judge**

Meghalaya
17.12.2021
***"D.Thabah-PS"***