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UNION OF INDIA AND ANR.

v.

M.M. SHARMA

(Civil Appeal No. 2797 of 2011)

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MARCH 30, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

C *Service Law – Misconduct – Dismissal – Respondent, First Secretary in Indian Embassy at China, was allegedly found involved in unauthorized and undesirable liaison with foreign nationals of the host country – Appellant-authority, by exercising powers under clause(c) of the second proviso to Article 311(2) of the Constitution, dispensed with enquiry into* D *the conduct of the respondent and dismissed him from service – Respondent challenged the order – Tribunal directed re-consideration of the punishment – Appellant-authority maintained the dismissal order – Respondent again filed application before the Tribunal, which was dismissed –* E *Respondent filed writ petition – High Court set aside the second order of appellant-authority on ground that it was not a reasoned order and directed the appellants to pass fresh order with reasons for imposing penalty of dismissal – Justification of – Held: Not justified – The reasons contained* F *in the records establish that in the facts of this case holding of an enquiry was rightly dispensed with, in the interest of security of the country – A very high level committee, on basis of materials available on record, prima facie came to the conclusion that action could be taken for dismissal of* G *respondent – The charges against the respondent being very serious and also in view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged – The power to be exercised under clauses (a), (b) and (c) of the*

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Second proviso to Article 311(2), being special and extraordinary powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty – If in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer – Order passed by the High Court is therefore set aside and the order passed by the Tribunal is restored – Constitution of India, 1950 – Art.311(2), sub-clause(c) of second proviso.

Constitution of India, 1950 – Article 311 – Exercise of power under – Ambit and scope of – Discussed.

Doctrines – Doctrine of 'pleasure" – Recognition of, under the Indian Constitution by way of Article 310 – Held: Under the aforesaid provision, all civil posts under the Government are held at the pleasure of the Government under which they are held and are terminable at its will – But the same is subject to other provisions of the Constitution which include the restrictions imposed by Article 310(2) and Article 311(1) and Article 311(2).

Respondent, First Secretary in Indian Embassy at China, was allegedly found involved in unauthorized and undesirable liaison with foreign nationals of the host country. The appellant-authority, by exercising powers under clause(c) of the second proviso to Article 311(2) of the Constitution, dispensed with enquiry into the conduct of the respondent and dismissed him from service. Respondent challenged the order before the Tribunal. The Tribunal directed re-consideration as to whether the penalty of dismissal could be substituted by any other lesser punishment. The appellant-authority

A maintained the dismissal order. Respondent again filed application before the Tribunal. The Tribunal dismissed the application. Respondent filed writ petition. The High Court set aside the second order of appellant-authority on ground that it was not a reasoned order and directed B the appellants to pass order afresh with reasons for imposing penalty of dismissal from service. Hence the present appeal.

Allowing the appeal, the Court

C HELD:1. Article 311 of the Constitution provides for protection to public servant from punitive action being taken against them by an authority subordinate to one who appointed him, or without holding an inquiry in accordance with law. Exceptions in Article 311 are D contained in second proviso in the nature of clauses (a), (b) & (c) which provide that the said Article shall not apply to employees who have been punished for conviction in a criminal case or where inquiry is not practicable to be held for reasons to be recorded in writing or where the E President or Governor as the case may be is satisfied that such an order is required to be passed without holding an enquiry in the interest of security of the State. [Para 13] [31-B-C]

F 2. In India, the doctrine of 'pleasure" is recognized by way of Article 310 of the Constitution. Under the aforesaid provision, all civil posts under the Government are held at the pleasure of the Government under which they are held and are terminable at its will. But the same is subject to other provisions of the Constitution which G include the restrictions imposed by Article 310 (2) and Article 311(1) and Article 311(2). Therefore, under the Indian constitution dismissal of civil servants must comply with the procedure laid down in Article 311, and Article 310(1) cannot be invoked independently with the H object of justifying a contravention of Article 311(2). There

is an exception provided by way of incorporation of Article 311 (2) with sub-clauses (a), (b) and (c). No such inquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of persons when the same relates to dismissal on the ground of conviction or where it is not practicable to hold an inquiry for the reasons to be recorded in writing by that authority empowered to dismiss or remove a person or reduce him in rank or where it is not possible to hold an enquiry in the interest of the security of the State. These three exceptions are recognized for dispensing with an inquiry, which is required to be conducted under Article 311 of the Constitution of India when the authority takes a decision for dismissal or removal or reduction in rank in writing. In other words, although there is a pleasure doctrine, however, the same cannot be said to be absolute and the same is subject to the conditions that when a government servant is to be dismissed or removed from service or he is reduced in rank a departmental inquiry is required to be conducted to enquire into his misconduct and only after holding such an inquiry and in the course of such inquiry if he is found guilty then only a person can be removed or dismissed from service or reduced in rank. However, such constitutional provision as set out under Article 311 of the Constitution of India could also be dispensed with under the exceptions provided in Article 311(2) of the constitution where clause (a) relates to a case where upon a conviction of a person by a criminal court on certain charges he could be dismissed or removed from service or reduced in rank without holding an inquiry. Similarly, under clause (c) an inquiry to be held against the government employee could be dispensed with if it is not possible to hold such an inquiry in the interest of the security of the State. Sub-clause (b) on the other hand provides that such an inquiry could be dispensed with by the concerned authority, after recording reasons, for

A which it is not practicable to hold an inquiry. The aforesaid power is an absolute power of the disciplinary authority who after following the procedure laid down therein could resort to such extra ordinary power provided it follows the pre-conditions laid down therein
B meaningfully and effectively. [Para 14] [31-D-H; 32-A-G]

3. Clause (b) of the second proviso to Article 311 (2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the
C delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken. Clause (c) of the second proviso to Article 311 (2) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there
D must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the
E Tribunal, where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of security of State is based on reasons and is not arbitrary. If and when such an order is challenged in the court of law the competent authority would have to
F satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of the security of the State. [Para 15] [32-H; 33-A-D]

G 4. In the present case, even in the first order passed by the Tribunal it was clearly recorded that it could be held from the records, as available, that there essentially was no arbitrariness in the approach of the Government of India while dealing with an officer who had by his conduct showed that he was not reliable for holding
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sensitive or superior positions and therefore invocation of power under Article 311(2)(c) of the Constitution of India also cannot be faulted because of the sensitive nature of the issues. The aforesaid order passed by the Tribunal in the due course has become final and binding as no challenge was made as against the aforesaid observation by any of the parties before any higher forum. The Tribunal, however, by the aforesaid order issued a direction to the Government to consider as to whether the penalty could be substituted by issuing a lesser punishment. In terms of the aforesaid order the competent authority reconsidered the matter and maintained the order of punishment awarded to the respondent holding that it is not possible either to substitute the penalty of the respondent from dismissal to reduction in rank or to grant him any pensionary benefit. The said order therefore indicates that the direction of the Tribunal was duly complied with and an effective and conscious decision was taken by the competent authority to maintain the penalty of dismissal. There are credible and substantial materials on record in terms of clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid action of invoking the extra ordinary provisions like clause (c) to second proviso to Article 311(2) was also found to be justified by the Tribunal in the earlier stage of litigation itself. Despite the said fact the High Court held that the second order passed by the Tribunal not being a speaking order showing application of mind cannot be upheld and consequently the High Court passed the impugned order thereby setting aside the order passed by the Tribunal with a direction to the appellants to pass a fresh speaking order giving reasons for its decision. The reasons contained in the records establish that in the facts of this case holding of an enquiry was rightly dispensed with in the interest of security of the country. The Tribunal had in the earlier round of litigation upheld the action of the

A appellants in dispensing with the enquiry in the interest of the security of the State. The said order of the Tribunal has also become final and binding. [Paras 16 to 20] [33-E-H; 34-A-H; 35-A-B]

B 5. The allegations against the respondent are very serious which could jeopardize the sovereignty and integrity of India. The records disclose the highly objectionable activities and conduct of the respondent which is unbecoming of a responsible Government servant. The Inquiry Committee took the decision of not C disclosing the grounds for taking action against the delinquent officer under clause (c) of the proviso to Article 311(2) of the Constitution because disclosure of the same or holding of an inquiry has the potential to jeopardize national security and relations with a neighbouring D country and such disclosure could lead to gross embarrassment to the Government of India. Intelligence Bureau has already conducted an inquiry and findings of the inquiry officer were based on the written statement of the suspected officer and other officers; analysis of E phone records; and recovery of photographs from the laptop of the respondent. In that context and in view of the reasons recorded it was concluded that the allegation had far reaching effects and therefore it was decided to dispense with holding of any inquiry in the matter and F also to dismiss him from service. A very high level committee considered the entire record and the allegations against the respondent and on the basis of the materials available on record, the committee *prima facie* came to the conclusion that action could be taken G for his dismissal under clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid recommendation is available on record and the High Court could have called for such record and therefrom satisfy itself that there are sufficient and cogent reasons

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recorded for taking action under Article 311(2) (c) of the Constitution and also for imposing the penalty for dispensation of the service of the respondent by way of dismissal from the service. [Paras 21, 22] [35-C-H; 36-A-B] A

6. The charges against the delinquent officer being very serious and also in view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged. The reasons recorded in the official file against the person for dismissing him from service need not be incorporated in the impugned order passed. The High Court while passing the impugned order was fully and effectively aware of the reasons as to why the requirement of holding an enquiry in accordance with law was dispensed with. Being so situated, the High Court could have examined and scrutinised the original records to ascertain for itself as to whether the order imposing the penalty of dismissal of service is justified or not in the light of the allegations and the reports of the fact finding enquiry. The power to be exercised under clauses (a), (b) and (c) being special and extraordinary powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty. For taking action in due discharge of its responsibility for exercising powers under clause (a) or (b) or (c) it is nowhere provided that the disciplinary authority must provide the reasons indicating application of mind for awarding punishment of dismissal. While no reason for arriving at the satisfaction of the President or the Governor, as the case may be, to dispense with the enquiry in the interest of the security of the State is required to be disclosed in the order, one cannot hold that, in such a situation, the B C D E F G H

impugned order passed against the respondent should mandatorily disclose the reasons for taking action of dismissal of his service and not any other penalty. [Paras 23, 24] [36-C-H; 37-A]

7. If in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer. The order and direction passed by the High Court is therefore set aside and the order passed by the Tribunal is restored. [Paras 25, 26] [37-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2797 of 2011.

From the Judgment & Order dated 27.9.2010 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 6525 of 2010.

P.P. Malhotra, ASG, J.S. Attri, Gaurav Sharma, M. Tatia, Madhurima Toho, Anil Katiyar for the Appellants

U.K. Singh, Ranjan Kumar, Geetika Sharma for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Delay condoned.

2. Leave granted.

3. The present appeal is directed against the judgment and order dated 27.09.2010 whereby the Delhi High Court partly allowed the writ petition filed by the respondent herein by

issuing a direction to the appellants to pass a speaking order by giving reasons for imposing the penalty of dismissal from service in exercise of powers under Article 311(2)(c) of the Constitution and not any other penalty. A

4. In order to appreciate the contentions raised by the parties hereto some basic facts leading to filing of the aforesaid writ petition in the High Court must be stated. B

5. The respondent was posted as First Secretary w.e.f. 02.07.2007 to 03.05.2008 in the Embassy of India, Beijing, China. While on special assignment, the respondent came C under adverse notice and was found to be involved in an unauthorized and undesirable liaison with foreign nationals of the host country. The conduct of the respondent was enquired into by the Intelligence Bureau (IB). The Director, upon completion of the said inquiry forwarded a detailed report D including findings of the Inquiry Officer. The aforesaid report was considered and it was felt that in view of the seriousness of the case and the adverse implications on the security of the State, it would not be expedient to hold the inquiry due to the following reasons: - E

(i) The respondent was on special assignment and entrusted with responsible duties of external intelligence. Any formal inquiry would jeopardize security of India, as it would reveal details of intelligence operation in the host country. F

(ii) For a proper disciplinary inquiry to be conducted, witnesses would be required to be examined. In this case witnesses can be either foreign nationals or officers working under cover in Indian Embassy in China and G examination thereof would certainly jeopardize the security of the State.

6. Consequently, the competent authority took a decision that the services of the respondent should be dispensed with H

A by exercising powers under Clause (c) of Second Proviso to Article 311(2) of the Constitution of India. Consequent thereto an order dated 22.12.2009 was issued intimating and stating that the President is satisfied to invoke Clause (c) of Second Proviso to Article 311(2) of the Constitution of India that in the B interest of the security of the State it is not expedient to hold the inquiry in the case of the respondent. It was also mentioned in the said order that the President is also satisfied that on the basis of information available the activities of the respondent are such as to warrant his dismissal from the service.

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7. The respondent challenged the aforesaid order by filing an Original Application before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') which was registered as OA No. 176 of 2009. In the said Original Application contentions raised inter alia were D that the order dated 22.12.2008 passed in exercise of power under Clause (c) of Second Proviso to Article 311(2) of the Constitution of India should be set aside. The aforesaid application was heard and the Tribunal passed an order on 10.12.2009 disposing of the said Original Application by E holding that the order does not reveal that there has been application of mind with regard to the nature of punishment to be awarded to the respondent. The Tribunal directed the Government to re-consider whether the aforesaid penalty awarded to the respondent could be substituted by any other F punishment.

8. Pursuant to the aforesaid order passed by the Tribunal the matter was placed before the competent authority once again and in compliance of the order of the Tribunal an order I, G was passed by the Cabinet Secretariat, Government of India on 03.06.2010, which reads as follows:

"WHEREAS Shri M.M. Sharma was dismissed from service under the provisions of sub-clause (c) of the second proviso to clause 2 of Article 311 of the

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Constitution vide order No/2/2008-DO.II (A) 9Pt.I)-3643 dated 22.12.2008:

AND WHEREAS, Shri M.M. Sharma filed an Original Application No. 176/2009 in the Principal Bench of Central Administrative Tribunal, New Delhi praying for setting aside and quashing the said order of dismissal; dated 22.12.2008.

AND WHEREAS the Hon'ble Tribunal in their order dated 10.12.2009 in the said OA No. 176/2009 directed the Government to consider whether the penalty of dismissal could be substituted by 'reduction in rank' or the ex-officer could be granted any pensionary benefits.

AND WHEREAS, the Government, in pursuance of observations of Hon'ble Tribunal re-considered the case of dismissal of Shri M.M. Sharma.

NOW, THEREFORE, the President orders that it is not possible either to substitute the penalty of Shri M.M. Sharma from 'dismissal' to 'reduction in rank' or to grant him any pensionary benefits.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

(K.B.S. KATOCH)

ADDITIONAL SECRETARY TO THE GOVT. OF INDIA"

9. The aforesaid order passed by the President came to be challenged before the Tribunal by the respondent by filing an Original Application which was registered as OA No. 2440 of 2010. The aforesaid application was taken up for hearing and the same was disposed of by the Tribunal vide its Judgment and Order dated 04.08.2010. By the aforesaid Judgment and Order, the Tribunal dismissed the Original Application holding that the matter called for no interference in the hands of the

A Tribunal. While coming to the aforesaid conclusion the Tribunal hold that invocation of power under Article 311(2) (c) of the Constitution of India cannot be faulted with because of the sensitive nature of the issues involved, which have become final and binding on the parties. It was also held that only question B that was required to be decided by the competent authority was to re-consider the nature of penalty imposed on the respondent.

10. Since the Tribunal held the appellants have re-considered the question of punishment reiterating that it is not possible either to substitute the penalty of the respondent from C 'dismissal' to 'reduction in rank' or to grant him any pensionary benefits, therefore, the same indicates and establishes the satisfaction for arriving at the decision of the competent authority to maintain the penalty of dismissal.

D 11. The aforesaid order was challenged by the respondent before the High Court of Delhi by filing a writ petition in which the High Court partly allowed the writ petition holding that the order which was passed by the competent authority on 03.06.2010 was not a reasoned order. The High Court therefore E issued a direction that the appellants must pass a reasoned order showing its application of mind. The High Court set aside the order dated 04.08.2010 passed by the Tribunal and directed the appellants to give reasons for levying the penalty of dismissal from service and pass a fresh order. The aforesaid F Judgment and Order passed by the High Court is under challenge in this appeal on which we heard the learned counsel appearing for the parties and also scrutinised the entire records.

12. Within the scheme of the Constitution of India, G provisions relating to public service may be found in Articles 309, 310 and 311. It is important to note that these provisions (namely Articles 310 and 311) afford protection to public servants from penalty in the nature of dismissal, removal, or reduction which cannot be imposed without holding a proper H

inquiry or giving a hearing. An explicit articulation of "protection" in Article 311 of the Constitution itself gives an impression of complete 'protection' to the civil servants. A

13. Article 311 provides for protection to public servant from punitive action being taken against them by an authority subordinate to one who appointed him, or without holding an inquiry in accordance with law. Exceptions in Article 311 are contained in second proviso in the nature of clauses (a), (b) & (c) which provide that the said Article shall not apply to employees who have been punished for conviction in a criminal case or where inquiry is not practicable to be held for reasons to be recorded in writing or where the President or Governor as the case may be is satisfied that such an order is required to be passed without holding an enquiry in the interest of security of the State. B C D

14. In order to appreciate the ambit or scope of power to be exercised under Article 311 of the Constitution of India it is to be noticed that in India we apply the doctrine of 'pleasure", which is recognized under our constitution by way of Article 310 of the Constitution of India. Under the aforesaid provision, all civil posts under the Government are held at the pleasure of the Government under which they are held and are terminable at its will. The aforesaid power is what the doctrine of pleasure is, which was recognized in the United Kingdom and also received the constitutional sanction under our Constitution in the form of Article 310 of the Constitution of India. But in India the same is subject to other provisions of the Constitution which include the restrictions imposed by Article 310 (2) and Article 311(1) and Article 311(2). Therefore, under the Indian constitution dismissal of civil servants must comply with the procedure laid down in Article 311, and Article 310(1) cannot be invoked independently with the object of justifying a contravention of Article 311(2). There is an exception provided by way of incorporation of Article 311 (2) with sub-clauses (a), (b) and (c). No such inquiry is required to be conducted for the E F G H

purposes of dismissal, removal or reduction in rank of persons when the same relates to dismissal on the ground of conviction or where it is not practicable to hold an inquiry for the reasons to be recorded in writing by that authority empowered to dismiss or remove a person or reduce him in rank or where it is not possible to hold an enquiry in the interest of the security of the State. These three exceptions are recognized for dispensing with an inquiry, which is required to be conducted under Article 311 of the Constitution of India when the authority takes a decision for dismissal or removal or reduction in rank in writing. In other words, although there is a pleasure doctrine, however, the same cannot be said to be absolute and the same is subject to the conditions that when a government servant is to be dismissed or removed from service or he is reduced in rank a departmental inquiry is required to be conducted to enquire into his misconduct and only after holding such an inquiry and in the course of such inquiry if he is found guilty then only a person can be removed or dismissed from service or reduced in rank. However, such constitutional provision as set out under Article 311 of the Constitution of India could also be dispensed with under the exceptions provided in Article 311(2) of the constitution where clause (a) relates to a case where upon a conviction of a person by a criminal court on certain charges he could be dismissed or removed from service or reduced in rank without holding an inquiry. Similarly, under clause (c) an inquiry to be held against the government employee could be dispensed with if it is not possible to hold such an inquiry in the interest of the security of the State. Sub-clause (b) on the other hand provides that such an inquiry could be dispensed with by the concerned authority, after recording reasons, for which it is not practicable to hold an inquiry. The aforesaid power is an absolute power of the disciplinary authority who after following the procedure laid down therein could resort to such extra ordinary power provided it follows the pre-conditions laid down therein meaningfully and effectively.

15. It should also be pointed out at this stage that clause

(b) of the second proviso to Article 311 (2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken. Clause (c) of the second proviso to Article 311 (2) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the Tribunal, where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of security of State is based on reasons and is not arbitrary. If and when such an order is challenged in the court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of the security of the State.

16. We have analyzed the facts of the present case and on such analysis, we find that even in the first order passed by the Tribunal on 10th December, 2009 itself it was clearly recorded that it could be held from the records, as available, that there essentially was no arbitrariness in the approach of the Government of India while dealing with an officer who had by his conduct showed that he was not reliable for holding sensitive or superior positions and therefore invocation of power under Article 311(2)(c) of the Constitution of India also cannot be faulted because of the sensitive nature of the issues.

17. The aforesaid order passed by the Tribunal in the due course has become final and binding as no challenge was made as against the aforesaid observation by any of the parties before any higher forum. The Tribunal, however, by the aforesaid order issued a direction to the Government to

consider as to whether the penalty could be substituted by issuing a lesser punishment.

18. In terms of the aforesaid order the competent authority reconsidered the matter and maintained the order of punishment awarded to the respondent holding that it is not possible either to substitute the penalty of the respondent from dismissal to reduction in rank or to grant him any pensionary benefit. The said order therefore indicates that the direction of the Tribunal was duly complied with and an effective and conscious decision was taken by the competent authority to maintain the penalty of dismissal.

19. There are credible and substantial materials on record in terms of clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid action of invoking the extra ordinary provisions like clause (c) to second proviso to Article 311(2) was also found to be justified by the Tribunal in the earlier stage of litigation itself.

20. Despite the said fact the High Court held that the order dated 04.08.2010 passed by the Tribunal not being a speaking order showing application of mind cannot be upheld and consequently the High Court passed the impugned order dated 27.09.2010 thereby setting aside the order passed by the Tribunal with a direction to the appellants herein to pass a fresh speaking order giving reasons for its decision. The said findings of the High Court are being challenged in this appeal contending inter alia that a conscious and informed decision has been taken on the basis of materials on record to dismiss the respondent from the service and the reasons for inability to hold an inquiry in the interest of the security of the State have also been recorded although there is no such mandate to record such reasons. The records indicate that there are sufficient reasons and materials on record as to why the service of the respondent was dispensed with in the interest of the security of the State. We are also satisfied that the reasons contained in the records establish that in the facts of

this case holding of an enquiry was rightly dispensed with in the interest of security of the country. We must hasten to add that the Tribunal had in the earlier round of litigation upheld the action of the appellants in dispensing with the enquiry in the interest of the security of the State. The said order of the Tribunal has also become final and binding. Therefore, challenge in the present round of litigation is whether the appellants are justified in awarding the punishment of dismissal from service on the respondent which also deprives him from getting any pensionary benefit.

21. The original records were placed before us, which we have perused. The allegations against the respondent are very serious which could jeopardize the sovereignty and integrity of India. The records also disclose the highly objectionable activities and conduct of the respondent which is unbecoming of a responsible Government servant. The Inquiry Committee took the decision of not disclosing the grounds for taking action against the delinquent officer under clause (c) of the proviso to Article 311(2) of the Constitution because disclosure of the same or holding of an inquiry has the potential to jeopardize national security and relations with a neighbouring country and such disclosure could lead to gross embarrassment to the Government of India. Intelligence Bureau has already conducted an inquiry and findings of the inquiry officer were based on the written statement of the suspected officer and other officers; analysis of phone records; and recovery of photographs from the laptop of the respondent. In that context and in view of the reasons recorded it was concluded that the allegation had far reaching effects and therefore it was decided to dispense with holding of any inquiry in the matter and also to dismiss him from service.

22. A very high level committee considered the entire record and the allegations against the respondent and on the basis of the materials available on record, the committee prima facie came to the conclusion that action could be taken for his

A dismissal under clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid recommendation is available on record and the High Court could have called for such record and therefrom satisfy itself that there are sufficient and cogent reasons recorded for taking action under Article 311(2) (c) of
B the Constitution and also for imposing the penalty for dispensation of the service of the respondent by way of dismissal from the service.

23. In our considered opinion, in the present case, charges against the delinquent officer being very serious and also in
C view of the fact that the respondent was working in a very sensitive post, it cannot be said to be a case of disproportionate punishment to the offence alleged. The reasons recorded in the official file against the person for dismissing him from service need not be incorporated in the impugned order passed.
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24. The High Court while passing the impugned order was fully and effectively aware of the reasons as to why the requirement of holding an enquiry in accordance with law was dispensed with. Being so situated, the High Court could have
E examined and scrutinised the original records to ascertain for itself as to whether the order imposing the penalty of dismissal of service is justified or not in the light of the allegations and the reports of the fact finding enquiry. The power to be exercised under clauses (a), (b) and (c) being special and extraordinary
F powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty. For taking action in due discharge of its responsibility for exercising powers under clause (a) or (b) or (c) it is nowhere
G provided that the disciplinary authority must provide the reasons indicating application of mind for awarding punishment of dismissal. While no reason for arriving at the satisfaction of the President or the Governor, as the case may be, to dispense with the enquiry in the interest of the security of the State is required to be disclosed in the order, we cannot hold that, in
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such a situation, the impugned order passed against the respondent should mandatorily disclose the reasons for taking action of dismissal of his service and not any other penalty. A

25. If in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer. The High Court was, therefore, not justified in passing the impugned order. B C

26. For the aforesaid reasons, we hold that the order and direction passed by the High Court cannot be sustained. Consequently, we set aside the same and restore the order dated 04.08.2010 passed by the Central Administrative Tribunal, Principle Bench at New Delhi in OA No. 2440 of 2010. D

27. The present appeal is accordingly allowed to the aforesaid extent leaving the parties to bear their own costs.

B.B.B. Appeal allowed. E

A SHANTA TALWAR & ANR.

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 3072-73 of 2004)

APRIL 5, 2011

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[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

Land Acquisition Act, 1894 – ss.4, 5A, 6, 17(1) and 17(4)

C *– Metro Railways in Delhi – Acquisition of land for purposes of Metro Railways – Applicability of the LA Act – Whether in view of the provisions of the Metro Railways Act, which was applicable to the city of Delhi, the land for the purpose of construction of Metro Railway could and should only be*

D *acquired under the provisions of the said Act and not under the provisions of the LA Act – Held: There is no express provision in the Metro Railways Act repealing applicability of the provisions of the LA Act – So long as there is no specific repeal of applicability of the LA Act for the purpose of*

E *acquiring land for establishing metro railways it cannot be presumed that there is an implied repeal -- The Metro Railways Act was enacted by the legislature, in order to provide additional provisions for construction of Metro Railways or other works connected therewith but it was not*

F *made obligatory by the legislature to invoke only the provisions of the said Metro Railways Act in case of acquisition of land for construction of Metro Railways or other works connected therewith – It is left upon to the discretion of the concerned competent authority to take recourse to any of the aforesaid provisions making it clear that if resort is taken*

G *to the provisions of LA Act, the said provisions could only be made applicable and no provision of the Metro Railways Act would then be resorted to – Similarly, if provisions of the Metro Railways Act is taken resort to, then only such provisions*

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would apply and not the provisions of the LA Act – There is no bar or prohibition for the authority to take recourse to the provisions of the LA Act which is also a self-contained Code and also could be taken recourse to for the purpose of acquiring land for public purposes like construction of Metro Railways and works connected therewith – Metro Railways (Construction of Works) Act, 1978 – ss. 17, 40 and 45.

Land acquisition proceedings were initiated for construction of Prem Nagar Station, which is a part of Mass Rapid Transit System [MRTS], a project undertaken by the Delhi Metro Rail Corporation [DMRC]. The land was sought to be acquired by issuing a notification under Section 4 of the Land Acquisition Act, 1894 (LA Act), but by the aforesaid notification, urgency provision under Section 17(1) read with Section 17(4) of the LA Act was also invoked dispensing with the enquiry inviting objections under Section 5-A of the LA Act, which was followed by issuance of Declaration under Section 6 and notice under Section 9.

The appellants-landowners challenged the land acquisition proceedings contending *inter alia* that no acquisition on behalf of the Metro Railways could be made under the general law, i.e., LA Act, as the Metro Railways (Construction of Works) Act, 1978, a special legislation, was enacted by the Parliament with the specific purpose and object of speedy and adequate acquisition of land by the Central Government. The appellants contended that in view of the enactment and aforesaid special Act of 1978, which is a complete and self-contained code providing for acquisition of land solely for the purposes of Metro Railways, applicability of the LA Act for the purpose of Metro Railways should be deemed to be impliedly repealed. The appellants further contended that the Metro Railways Act, which is a specific law on the subject, having specifically

A excluded incorporation of any law in the nature of Section 17(1) and 17(4) of the LA Act, which provides for dispensation of the enquiry as envisaged under Section 5-A of the LA Act, the respondents acted illegally and without jurisdiction in taking resort to the said urgency B provisions of the LA Act for the purpose of acquisition of land of the appellants, particularly, when there is no such provision in the Metro Railways Act for dispensation of such enquiry.

C The Respondents, on the other hand, contended *inter alia* that despite the fact that the Metro Railways Act is in operation, yet the respondents are not denuded of the power of invoking the provisions of the LA Act which empowers the respondents to acquire land for the public purpose, i.e., construction of MRTS projects in the cases D at hand.

The question which thus arose for consideration in the instant appeals was whether in view of the provisions of the Metro Railways (Construction of Works) Act, 1978, E which is applicable to the city of Delhi, the land for the purpose of construction of Metro Railway could and should only be acquired under the provisions of the said Act and not under the provisions of the LA Act.

F Dismissing the appeals, the Court

HELD:1.1. In a situation, where recourse is taken to the provisions of the LA Act for acquiring a property for construction of Metro Railways or other works connected therewith, the provisions mentioned in the LA Act could G and would only be made applicable and no provision of Metro Railways Act could be taken resort to or making use of. Similarly when recourse is taken for acquiring land under the Metro Railways Act, no provision of the LA Act would or could be made applicable as both the H two Acts contain separate provisions, although they are

similar in some respect. The Metro Railways Act gives the detailed procedure as to how land for construction of Metro Railways or other works connected therewith could be acquired. The Act also lays down the procedure for payment of compensation. Section 17 of the Metro Railways Act specifically states that nothing in the LA Act would apply to an acquisition under the Metro Railways Act. However, in Section 45 a saving clause has been inserted, providing that any proceeding for the acquisition of any land under the LA Act for the purpose of any Metro Railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that Act as if this Act had not come into force. However, it cannot be said that by inserting the said provision under Section 40 and Section 45 and also in view of the Statements of Object and Reasons of the Metro Railways Act, the applicability of LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith would stand repealed and could not be taken resort to. There is no express provision in the Metro Railways Act repealing applicability of the provisions of the LA Act. So long as there is no specific repeal of applicability of the LA Act for the purpose of acquiring land for establishing metro railways it cannot be presumed that there is an implied repeal as sought to be submitted by the appellants. It also cannot be construed that the Metro Railways Act is a special Act, of such a nature, that with the enactment of the said Act the general law in LA Act would get obliterated and automatically repealed so far as acquisition of land for the purpose of Metro Railways is concerned. [Paras 16, 17 and 18] [52-E-H; 53-A-F]

1.2. It cannot be said that it was intended by the legislature to do away with the applicability of the LA Act for the purpose of acquisition of land for construction of

A Metro Railways or other works connected therewith by enacting the Metro Railways Act. The Metro Railways Act was enacted by the legislature, in order to provide additional provisions for construction of Metro Railways or other works connected therewith but it was not made B obligatory by the legislature to invoke only the provisions of the said Metro Railways Act in case of acquisition of land for construction of Metro Railways or other works connected therewith. It was left upon to the discretion of the concerned competent authority to take recourse to C any of the aforesaid provisions making it clear that if resort is taken to the provisions of LA Act, the said provisions could only be made applicable and no provision of the Metro Railways Act would then be resorted to. Similarly, if provisions of the Metro Railways D Act is taken resort to, then only such provisions would apply and not the provisions of the LA Act. [Para 20] [53-H; 54-A-D]

1.3. Wherever a particular State Act incorporates the provision of the LA Act by way of reference or by way of E incorporation by the legislation, the provisions of the LA Act automatically become applicable for the purpose of carrying out the object of the said particular State Act but wherever such power is not given there is no bar for taking recourse to any of the Acts which are available on F the subject. There was no bar or prohibition for the authority to take recourse to the provisions of the LA Act which is also a self-contained Code and also could be taken recourse to for the purpose of acquiring land for public purposes like construction of Metro Railways and G works connected therewith. In all these cases no other provision except the provisions of the LA Act have been resorted to and, therefore, the appellants cannot have any grievance for taking recourse to the said provision. Besides, the Metro Railways Act gives power to the H competent authority to acquire land for the purpose of

construction of Metro Railways and works connected therewith and in the said Act it is also provided that the possession can be taken immediately after issuance of the declaration as envisaged under the Act. The mode of compensation is almost identical with that of Section 23 of the LA Act which lays down the manner for determination of the compensation to be paid. [Paras 22, 23] [55-F-H; 56-A-C]

1.4. The only visible and specific distinction is absence of power of taking immediate possession in case of urgency as provided for under Sections 17(1) and 17(4) of the LA Act. As there was urgency for construction of the Metro Railways in Delhi because of various factors, urgency clause was invoked in the present case and consequent thereupon possession was taken and the construction work of the Metro Railways including construction of the stations is completed. Award has also been passed determining the compensation. Therefore, the appellants suffer no prejudice except for the fact that possession was taken in the instant case on an urgent basis. That plea has also been rendered infructuous in view of the fact that the entire project is complete. [Para 24] [55-D-F]

Rajinder Kishan Gupta and Anr. v. Union of India and Ors. **(2010) 9 SCC 46 = 2010 (10) SCR 172;** *S.S. Darshan v. State of Karnataka and Ors.* **(1996) 7 SCC 302 = 1995 (5) Suppl. SCR 221 and** *Nagpur Improvement Trust v. Vithal Rao and Ors.*, **(1973) 1 SCC 500 = 1973 (3) SCR 39 – referred to.**

2.1. There is no reason to quash the notification issued under Section 4 of the LA Act so as to postpone the date of acquisition to a later period thereby allowing the appellants an opportunity of getting higher compensation. Instead, it is felt appropriate that the policy

A and guidelines issued by the Government of NCT of Delhi could be best utilized. The aforesaid policy was issued by the Government of NCT of Delhi on 25.10.2006 by way of a Circular, which provides that the persons of all categories, affected due to the implementation of Delhi B MRTS projects can be relocated and rehabilitated for which the Government of India has communicated its decision on 28.08.2006 intimating that the DMRC has already relocated the persons affected by Line-III of Metro Phase-I project and that Delhi Development Authority C should provide necessary number of units for the rehabilitation of remaining project affected persons. [Para 25] [55-G-H; 56-A-B]

2.2. The counsel appearing for the DMRC stated before this Court that any such project affected person D could submit their application in a format prescribed, a copy of which was placed before this Court. This Court has been informed that all the appellants have filed their applications in the appropriate format to the concerned authorities. If the applications have been filed by the E appellants in the appropriate format, those are required to be considered by the concerned authorities as expeditiously as possible. If any of the appellants has not filed any such application in the format prescribed, it shall be open to such appellants also to file such applications F in appropriate format within three weeks from the date of this order, in which case, their applications shall also be considered along with the applications already filed by the other applicants/appellants and a decision thereon shall be taken within eight weeks from the date of receipt G of such applications. In case, any of the appellants is aggrieved by the decisions taken by DMRC or by the other competent authority, such a decision could be challenged by taking recourse to appropriate remedy as provided for under the law. [Para 26] [56-C-F]

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2.3. There is no merit in these appeals which are dismissed but giving right to the appellants to take recourse for their rehabilitation in terms of the circular issued by the Government of NCT of Delhi, leaving it open to the competent authority/Government to decide their cases in accordance with law. [Para 27] [56-G]

Case Law Reference:

2010 (10) SCR 172	**referred to**	**Para 9**
1995 (5) Suppl. SCR 221	**referred to**	**Para 9**
1973 (3) SCR 39	**referred to**	**Para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3072-3073 of 2004.

From the Judgment & Order dated 7.4.2004 of the High Court of Delhi at New Delhi in W.P. (Civil) Nos. 2329 & 2786 of 2004.

Ravinder Sethi, P.D. Gupta, Kamal Gupta, Abhishek Gupta, Puneet Sharma, Gagan Gupta, Rachana Joshi Issar, Rajesh Sah, Nidhi Tiwari, Himani Bhatnagar for the Appellants.

Tarun Johri, Ankur Gupta, Rachana Srivastava, Jatinder Kumar Bhaita for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Since all these appeals involve identical issues, we propose to dispose of all these appeals by this common judgment and order.

2. All these appeals are directed against the judgments and orders passed by the High Court of Delhi, whereby the High Court has dismissed the Writ Petitions filed by the appellants herein. The Writ Petition Nos. WP(C) 8440-43/2003; 2329/04 and 2786/04 filed by Pawan Singh & Ors.; Shanta Talwar and

A Diwan Chand, respectively, were dismissed by the Division Bench of the Delhi High Court by its common judgment and order dated 07.04.2004, whereas, the Writ Petition (Civil) No. 716/08 filed by Neera Jain and Writ Petition (Civil) No. 573/08, in which Veena Kapuria was the second Petitioner, were B dismissed by a common judgment and order dated 11.04.2008 passed by another Division Bench of the High Court of Delhi.

3. For the sake of brevity and convenience we propose to take the facts of the case in the Writ Petitions filed by Pawan Singh & Ors.; Shanta Talwar and Diwan Chand challenging the C acquisition proceedings of their lands for the construction of Prem Nagar Station, which is a part of Mass Rapid Transit System [for short 'MRTS'], which is a project undertaken by the Delhi Metro Rail Corporation [for short 'DMRC']. The aforesaid land was sought to be acquired by issuing a notification under D Section 4 of the Land Acquisition Act, 1894 [for short 'the LA Act'] on 16.10.2003, but by the aforesaid notification, urgency provision under Section 17(1) read with Section 17(4) of the LA Act was also invoked dispensing with the enquiry inviting objections under Section 5-A of the LA Act, which was followed E by issuance of Declaration under Section 6 and notice under Section 9 on 11.11.2003. There is no dispute with regard to the fact that the possession of the land was also taken by the DMRC on 24.12.2003 and thereafter construction of the metro station was started, which also stand completed as of now. An F award was passed in respect of the aforesaid land by the Land Acquisition Collector on 17.09.2004. Smt. Shanta Talwar and other appellants received the compensation as fixed by the Collector.

G 4. The Parliament of India, in the year 1978 had also enacted another legislation, namely, the Metro Railways (Construction of Works) Act, 1978 [for short 'the Metro Railways Act'] which also contains the provisions for acquisition of land required for specific purpose, namely, for the construction of H Metro Railways or other works connected therewith, like: -

(a) make or construct in, upon, across, under or over any lands, buildings, streets, roads, railways or tramways or any rivers, canals, brooks, streams or other waters or any drains, water-pipes, gas-pipes, electric lines or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, ways or passages, as the metro railway administration thinks proper;

(b) alter the course of any rivers, canals, brooks, streams or water-courses for the purpose of constructing tunnels, passages or other works over or under them and divert or alter as well temporarily as permanently, the course of any rivers, cannals, brooks, streams or water-courses or any drains, water-pipes, gas-pipes, electric lines or telegraph lines or raise or sink the level thereof in order the more conveniently to carry them over or under, as the metro railway administration thinks proper;

(c) make drains or conduits into, through or under, any lands adjoining the metro railway for the purpose of conveying water from or to the metro railway;

(d) erect or construct such houses, warehouses, offices and other buildings and such yards, stations, engines, machinery, apparatus and other works and conveniences, as the metro railways administration thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead;

(f) draw, make or conduct such maps, plans, surveys or tests, as the metro railway administration thinks property;

A (g) do all other acts necessary for making, maintaining, altering or repairing and using the metro railway;

However, in the said Writ Petitions filed by Pawan Singh & Ors.; Shanta Talwar and Diwan Chand, the lands were B acquired by the State Government under the LA Act for the establishment of Prem Nagar MRTS Station at the request of DMRC and not under the Metro Railways Act.

5. Two Civil Appeals are also filed against the dismissal C of two other Writ Petitions, viz., the Writ Petition (Civil) No. 716/08 filed by Neera Jain and Writ Petition (Civil) No. 573/08, in which Veena Kapuria was the second Petitioner, which were registered as Civil Appeal Nos. 3200/08 and 3199/08, respectively. The said cases involved lands which were D acquired by issuing a notification dated 10.08.2007 under Section 4 of the LA Act. Declaration was also issued in the said cases under Section 6 by issuing a notification on 01.11.2007 followed by the notice under Section 9 issued on 01.11.2007. Not only possession of the said land was taken E but also award was passed on 30.10.2010. The records disclose that some of the appellants in the said cases have also received the compensation.

6. Be that as it may, in all these appeals possession of land in question has already been taken and the purpose for F which the land was acquired has also been completed/achieved.

7. Contentions raised by all the appellants herein are that in view of the provisions of the Metro Railways Act, which is G applicable to the city of Delhi, the land for the purpose of construction of Metro Railway could and should only be acquired under the provisions of the said Act and not under the provisions of the LA Act. Counsel appearing for the appellants reinforced their arguments by contending *inter alia* that no H acquisition on behalf of the Metro Railways could be made

under the general law, i.e., LA Act, as a special legislation called the Metro Railways (Construction of Works) Act, 1978 was enacted by the Parliament with the specific purpose and object of speedy and adequate acquisition of land by the Central Government. It was contended that in view of the enactment and aforesaid special Act of 1978, which is a complete and self-contained code providing for acquisition of land solely for the purposes of Metro Railways, applicability of the LA Act for the purpose of Metro Railways should be deemed to be impliedly repealed.

8. It was further contended by the counsel appearing for the appellants that the Metro Railways Act, which is a specific law on the subject, having specifically excluded incorporation of any law in the nature of Section 17(1) and 17(4) of the LA Act, which provides for dispensation of the enquiry as envisaged under Section 5-A of the LA Act, the respondents acted illegally and without jurisdiction in taking resort to the said urgency provisions of the LA Act for the purpose of acquisition of land of the appellants, particularly, when there is no such provision in the Metro Railways Act for dispensation of such enquiry and providing for an opportunity of raising objections by the appellants with regard to very act of acquisiton.

9. The aforesaid submission of the counsel appearing for the appellants were countered by the counsel appearing for the respondents contending *inter alia* that despite the fact that there is an Act called Metro Railways Act in operation, yet the respondents are not denuded of the power of invoking the provisions of the LA Act which empowers the respondents to acquire land for the public purpose, i.e., construction of MRTS projects in the cases at hand. In support of the said contention counsel appearing for the respondents relied upon the decisions of this Court in the case of *Rajinder Kishan Gupta and Anr. V. Union of India and Ors.* reported at (2010) 9 SCC 46 and also on the decision of this Court in *S.S. Darshan v. State of Karnataka and Ors.* reported at (1996) 7 SCC 302.

A 10. We heard the learned counsel appearing for the parties who have elaborately taken us through the entire records.

11. In view of the ever increasing demand of urban population in Delhi, the existing service transport facilities were found to be inadequate and, therefore, a decision was taken by the Government for having a Mass Rapid Transit System. To undertake the said project DMRC was incorporated as a company under the Indian Companies Act. Thereafter, for the purpose of operation and maintenance of the Metro Railways in Delhi, an Ordinance was promulgated in 2002 by the President of India called 'the Delhi Metro Railway (Operation and Maintenance) Ordinance, 2002' which was replaced by an Act of Parliament, viz., Delhi Metro Railway (Operation and Maintenance) Act, 2002, in the same year. However, the fact remains that despite the enactment of the aforesaid two Acts of 1978 and 2002 whenever any land was required for the purpose of MRTS project, the same was acquired by the Land Acquisition authority from time to time under the Land Acquisition Act and the said acquired land was put at the disposal of the DMRC. In fact, in accordance with the project and planning undertaken for the said purpose, whenever a particular piece of land at a particular place was required by the DMRC, it had send a requisition to the land acquiring authority and on such request being made the land was acquired and put at the disposal of the DMRC. It is admitted fact that every time the machinery under the LA Act was put into motion, the provisions of the Metro Railways Act have never been invoked and the acquisitions in the present cases are no exception.

12. It is not in dispute that in Delhi land can be acquired by the Government, for public purpose, under the provisions of LA Act. The appellants are candid in accepting the importance of the MRTS project for the people of Delhi and also the fact that every time the machinery under the LA Act is put into

motion, the provisions of Metro Railways Act have never been invoked.

13. The Metro Railways (Construction of Works) Act, 1978, was also made applicable to Delhi, which provides for acquisition of land required for specific purpose, namely, for the construction of Metro Railways or other works connected therewith as mentioned above. Our attention was drawn to the Statement of Objects and Reasons of the Metro Railways Act, 1978, which states that the Bill provides a speedy and adequate procedure for the acquisition of land, buildings, streets, roads or passage or the right of user in, or the right in the nature of easement on, such building, land, etc., by the Central Government to the exclusion of the Land Acquisition Act, 1894. The Preamble of the Metro Railways Act also states that the Act provides for the construction of works relating to metro railways in metropolitan cities and for matters connected therewith. Power to acquire land for construction of any metro railways or for any other works connected therewith was vested on the Central Government under Section 6 of the said Metro Railways Act. Section 9 of the Act provided for the procedure for hearing of objections filed by the persons interested in the land, building, street, road or passage. So far as declaration of acquisition of land is concerned, the provision made was Section 10 of the Act and the power to take possession was vested on the competent authority appointed by the Central Government as provided for under Section 11 of the Metro Railways Act. Our specific attention was drawn to Section 45 of the Metro Railways Act which was a provision of saving, providing as follows: -

> "Section 45. Saving - Notwithstanding anything contained in this Act any proceeding, for the acquisition of any land, under the Land Acquisition Act, 1894 for the purpose of any metro railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that

A Act as if this Act had not come into force."

Section 40 of the Metro Railways Act also provides that the provision of the said Act or any Rule made or any notification issued thereunder would have effect notwithstanding anything inconsistent therewith contained in any enactment other than
B the said Act or in any instrument having effect by virtue of any enactment other than the said Act.

14. Relying on the Statement of Objects and Reasons, the Preamble and the abovesaid provisions of the Metro Railways
C Act it was contended by the counsel appearing for the appellants that in view of the incorporation of the said provisions in the said Act, there was an implied repeal of the Land Acquisition Act so far as it concerns construction of Metro Railways or other works connected therewith.

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15. Similar contentions were also raised before the High Court and the two Division Benches, who heard the matters in question dismissed the said plea holding that the two Acts are two independent Acts and it is for the authority to decide as to
E which Act would be made applicable in a given case.

16. However, in a situation, where recourse is taken to the provisions of the LA Act for acquiring a property for construction of Metro Railways or other works connected therewith, the provisions mentioned in the LA Act could and would only be
F made applicable and no provision of Metro Railways Act could be taken resort to or making use of. Similarly when recourse is taken for acquiring land under the Metro Railways Act, no provision of the LA Act would or could be made applicable as both the two Acts contain separate provisions, although they
G are similar in some respect.

17. The Metro Railways Act gives the detailed procedure as to how land for construction of Metro Railways or other works connected therewith could be acquired. The Act also lays down
H the procedure for payment of compensation. Section 17 of the

Metro Railways Act specifically states that nothing in the LA Act would apply to an acquisition under the Metro Railways Act. However, in Section 45 a saving clause has been inserted, providing that any proceeding for the acquisition of any land under the LA Act for the purpose of any Metro Railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that Act as if this Act had not come into force.

18. However, it cannot be said that by inserting the said provision under Section 40 and Section 45 and also in view of the Statements of Object and Reasons of the Metro Railways Act, the applicability of LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith would stand repealed and could not be taken resort to. There is no express provision in the Metro Railways Act repealing applicability of the provisions of the LA Act. So long as there is no specific repeal of applicability of the LA Act for the purpose of acquiring land for establishing metro railways it cannot be presumed that there is an implied repeal as sought to be submitted by the counsel appearing for the appellants. It also cannot be construed that the Metro Railways Act is a special Act, of such a nature, that with the enactment of the said Act the general law in LA Act would get obliterated and automatically repealed so far as acquisition of land for the purpose of Metro Railways is concerned.

19. A similar contention was raised before this Court in the case of *Rajinder Kishan Gupta* (supra). The counsel appearing for the appellants, however, submitted that although the said contention raised in the said case was rejected, but, according to them, the said decision needs reconsideration in view of the aforesaid specific provisions of the Metro Railways Act.

20. We are however unable to agree to and accept the aforesaid submission for the learned counsel for the appellants for we do not believe that it was intended by the legislature to

A do away with the applicability of the LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith by enacting the Metro Railways Act. The aforesaid Metro Railways Act was enacted by the legislature, in order to provide additional provisions for B construction of Metro Railways or other works connected therewith but it was not made obligatory by the legislature to invoke only the provisions of the said Metro Railways Act in case of acquisition of land for construction of Metro Railways or other works connected therewith. It was left upon to the C discretion of the concerned competent authority to take recourse to any of the aforesaid provisions making it clear that if resort is taken to the provisions of LA Act, the said provisions could only be made applicable and no provision of the Metro Railways Act would then be resorted to. Similarly, if provisions D of the Metro Railways Act is taken resort to, then only such provisions would apply and not the provisions of the LA Act.

21. One of the contentions of the counsel appearing for the appellants was that the decisions in the case of *Nagpur Improvement Trust v. Vithal Rao and Ors.* reported at (1973) E 1 SCC 500 which was relied upon by the High Court, was referred in the context of the particular State Act wherein reference was made to the LA Act and the provisions of the LA Act were made applicable for acquisition of land under that particular State Act also.

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22. Wherever a particular State Act incorporates the provision of the LA Act by way of reference or by way of incorporation by the legislation, the provisions of the LA Act automatically become applicable for the purpose of carrying out G the object of the said particular State Act but wherever such power is not given there is no bar for taking recourse to any of the Acts which are available on the subject. There was no bar or prohibition for the authority to take recourse to the provisions of the LA Act which is also a self-contained Code and also could be taken recourse to for the purpose of acquiring land H

for public purposes like construction of Metro Railways and works connected therewith. In all these cases no other provision except the provisions of the LA Act have been resorted to and, therefore, the appellants cannot have any grievance for taking recourse to the said provision.

23. Besides, the Metro Railways Act gives power to the competent authority to acquire land for the purpose of construction of Metro Railways and works connected therewith and in the said Act it is also provided that the possession can be taken immediately after issuance of the declaration as envisaged under the Act. The mode of compensation is almost identical with that of Section 23 of the LA Act which lays down the manner for determination of the compensation to be paid.

24. The only visible and specific distinction is absence of power of taking immediate possession in case of urgency as provided for under Sections 17(1) and 17(4) of the LA Act. As there was urgency for construction of the Metro Railways in Delhi because of various factors, urgency clause was invoked in the present case and consequent thereupon possession was taken and the construction work of the Metro Railways including construction of the stations is completed. Award has also been passed determining the compensation. Therefore, the appellants herein suffer no prejudice except for the fact that possession was taken in the instant case on an urgent basis. That plea has also been rendered infructuous in view of the fact that the entire project is complete.

25. We see no reason to quash the notification issued under Section 4 of the LA Act so as to postpone the date of acquisition to a later period thereby allowing the appellants an opportunity of getting higher compensation. Instead, we feel it appropriate that the policy and guidelines issued by the Government of NCT of Delhi could be best utilized. The aforesaid policy was issued by the Government of NCT of Delhi on 25.10.2006 by way of a Circular, which provides that the

A persons of all categories, affected due to the implementation of Delhi MRTS projects can be relocated and rehabilitated for which the Government of India has communicated its decision on 28.08.2006 intimating that the DMRC has already relocated the persons affected by Line-III of Metro Phase-I project and that
B Delhi Development Authority should provide necessary number of units for the rehabilitation of remaining project affected persons.

26. Counsel appearing for the DMRC informed us that any such project affected person could submit their application in
C a format prescribed, a copy of which was placed before us. We are informed that all the appellants herein have filed their applications in the appropriate format to the concerned authorities. If the applications have been filed by the appellants herein in the appropriate format, those are required to be
D considered by the concerned authorities as expeditiously as possible. If any of the appellants has not filed any such application in the format prescribed, it shall be open to such appellants also to file such applications in appropriate format within three weeks from the date of this order, in which case,
E their applications shall also be considered along with the applications already filed by the other applicants/appellants and a decision thereon shall be taken within eight weeks from the date of receipt of such applications. Needless to say that in case, any of the appellants is aggrieved by the decisions taken
F by DMRC or by the other competent authority, such a decision could be challenged by taking recourse to appropriate remedy as provided for under the law.

27. With aforesaid observations and directions we, find no
G merit in these appeals which are dismissed but giving right to the appellants herein to take recourse for their rehabilitation in terms of the circular issued by the Government of NCT of Delhi, leaving it open to the competent authority / Government to decide their cases in accordance with law.

H B.B.B. Appeals dismissed.