IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI

T.A.No. 395 of 2009

Commander Vinod Kumar Jha …Petitioners

Versus

Union of India & Ors. …Respondents

with

T.A. No.253 of 2010

Commander Vijendra Rana ....Petitioners

Versus

Union of India & Ors. ....Respondents

For the Petitioners: Sh. Sukhjinder Singh, Advocate (in T.A. 395 of 2009)

Ms. Nitya Ramakrishnan, Advocate, Mr. Trideep Pias and Mr. Ashwath Sitaraman(in T.A. 253 of 2010)

For the Respondents: Mr. K.P. Rawal, Addl. Solicitor General, Ms. Jyoti Singh, Advocates (in both the matters)

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Both these petitions involves similar question of law, therefore, they are disposed off together by a common order. However, for convenient disposal of both the cases facts given in the case of Commander Vinod Kumar Jha are taken into consideration.

2. Petitioner was a Naval Officer. He joined the NDA in July, 1981 and was commissioned in the Indian Navy on 1.7.1984. During 1984 to 1986, the petitioner underwent Sub. Lt's courses & further from 1987 to 1995 underwent long Navigation course and held prestigious appointments from time to time. From 2000 to 2003, he served with Director General, NCC at New Delhi and was awarded commendation by the Chief of Naval Staff. From 2003 to October 2005 he served the Naval Headquarters as System Officer and Joint Director (Coord. & Admn.) in Directorate of Naval Operations. It is alleged that on

14.7.2005 at midnight the personnel of Naval Intelligence and Naval Police along with other unidentified persons (IB/CBI) came to his house and ransacked his house at 11/12 Arjun Vihar, Dhaula Kuan, New Delhi. They picked up all his electronic gadgets, cash and other valuable things. They blind folded the petitioner and took him for interrogation. He was detained for more than 48 hours and he alleged that he was maltreated and was also physically assaulted.

3. He alleged that some of his articles were taken viz. DVD, Digital Camera, Video Camera, Laptops, Computer etc. but no panchnama of such articles was prepared. He was kept under custody for more than two days at unknown place. Petitioner was continuously and relentlessly asked by three unidentified personnel to confess and accept the stealing of computerized data from the “War Room” of the Naval Headquarters and passing on the same to Mr. K.

Shankaran. However, he denied of passing such information to Mr. K. Shankaran. Despite that he was tortured with third degree methods. He alleged that petitioner was forced to admit that he got benefits and favours in some kind from the vendors / suppliers of computers to the Navy. He alleged that these personnel put a photograph of a named woman and other obscene pictures on the mobile phone of the petitioner which had been seized from him and asked if he had any affair with that woman. However, he denied such insinuations. He took the stand that he was an absolutely clean person and denied his involvement with “Navy Warm Room” leakage to Mr. Shankaran and his colleagues Mr. Kulbhushan Parashar or Mr. K.K. Sharma, all ex-Naval Officers. He alleged that these persons were not apprehended or interrogated and no FIR was filed against them and it is alleged that Mr. Sankaran is still at large and he was

nephew of Respondent Nos. 2 & 3 i.e. Arun Prakash, Chief of Naval Staff. It is alleged that after 15 days of the petitioner's illegal arrest, he was called by Board of Inquiry and he was not given any convening order nor was made any reference to the Board of Inquiry. He alleged that Board of Inquiry was replete with many failures and deficiencies and he was not given any opportunity to defend himself before the Board of Inquiry. It is alleged that as per Regulation 205 (1) Regs Navy Part II (statutory) provides that *"full opportunity shall be afforded to a person whose character or reputation is effected or the inquiry may result in imputation of liability or responsibility for any loss or damage or he has contravened any order, rule or regulation".* He alleged that he was also not given copy of the Board of Inquiry, as is enjoined vide Regulation 209, Regs. Navy Part II (statutory). However, at the end of the Board of Inquiry,

the petitioner mustered before the President and the members when the Board had finished the examination of all the witnesses and was forced to sign on a paper, which was covered by a blank paper. He alleged that he was not given any opportunity before the Board of Inquiry and the conduct of Board of Inquiry is not fair and impartial. He alleged that he became a proverbial “sacrificial goat” so that the real culprit i.e. kin of the Chief of the Naval Staff is shielded and no blame is fastened on the Chief of the Naval Staff due to ulterior motives. He alleged that brain and the master mind, behind the leakage of classified information from the Naval Headquarters, had been the relative of the Chief of Naval Staff, who himself was an ex-naval officer and who had been residing “off and on” with him at his official residence and indulge in seeking information through telephones from his residence. It is also alleged that IB and CBI and Board of

Inquiry was aimed at shielding this businessman, relative of the Chief of the Naval Staff. Petitioner's allegation is that he was a clean person and Mr. K. Shankaran, nephew of the Chief of Naval staff was the real culprit. It is alleged that Mr. Kulbhushan Parashar and Mr. K.K. Sharma who were ex-Naval staff were involved in it and no action was taken against them. However, he was dismissed from the service invoking the "Pleasure Doctrine" of the President without affording any opportunity to defend himself. On 28.10.2005, he was called by the Commanding Officer INS India, and handed over Govt. India, Ministry of Defence communication dated 26.10.2005 conveying the orders of his dismissal from the Naval service and the actual dismissal was affected on 28.10.2005. This order of dismissal is sought to be challenged by the petitioner by this Writ Petition which reads as under:

"The Board of Inquiry has established that there has been a leakage of Information of commercial value to unauthorised persons. The Boards has identified the three culpable officers and their specific acts of omission and commission in the leakage of the information, which makes them liable for action under the provisions of the Navy / Official Secrets / Prevention of Corruption Acts. Three Officers are Captain Kashyap Kumar, Cdr Vinod Kumar Jha, Cdr. Vijendra Rana".

4. Similarly, Cdr. Vijendra Rana was working as a Joint Director, Naval Operation, South Block, since last three years. Prior to this assignment he was working at Defence Services Staff College, Wellington and the prestigious Marine Commando base of INS Abhimnyu, New Bombay. The petitioner had worked in the Navy for 17 ½ years with a glorious and unblemished service record. In April, 2005 a search was conducted at the residence of Wing Commander of the Indian Air Force Sambhajee L Surve and a pen drive was recovered and it was found that the pen drive was delivered to Mr. Surve

by a retired Naval Officer Lt. Kulbhushan Parashar. It is also alleged that the source of the information was narrowed down to a computer in the war room. 25 officers were put under surveillance in June, 2005, after the incident and Captain Kashyap Kumar, Director, Naval Operations, was picked up for questioning. In the night of 12th/13th July, 2005 petitioner was picked up from his residence & was blindfolded and was forcibly taken to some discrete place without any warrant. His house also was searched without any search warrant. He was taken to some unidentified place by 4-5 people lateron identified to be the officers from IB/CBI. He was tortured & humiliated and thereafter a confession was extracted from him by putting him under the threat of his life and life of his wife.

5. A detail reply was filed by the respondents in both these cases.

6. Respondent in their reply pointed out that misdeeds of the petitioner first came to light only through an accidental discovery of a pen drive by the air force authorities which contained a sensitive information pertaining to the Navy. The petitioner was, thereafter, kept under surveillance by civil and military agencies and the classified inputs received, pointed at the involvement of the petitioner in the leakage of sensitive information from the Naval War Room. The surveillance and investigation of the petitioner indicated his callous and negligent attitude, which could lead to vulnerabilities in the DNO network information on the same was forwarded to the Ministry of Defence. It is pointed out that the information which was leaked out was not only of a classified nature but also related to the defence of the country.

7. It is pointed out that independent Board of Inquiry was convened by the Navy under orders of the then Chief of

Personnel in his capacity as the Administrative Authority in the Naval Headquarters with a view to investigate and ascertain the facts and circumstances surrounding the leakage of information from an important and sensitive department such as Directorate of Naval Operations under which the Naval War Room functions. The Board was also to suggest corrective action and remedial measures with a view to avoid recurrence of such events in future. The said Board of Inquiry was headed by a Rear Admiral with Information Technology background. The Board of Inquiry confirmed after collecting the inputs which pointed out the culpability of, inter alia, the petitioner.

8. The Board of Inquiry confirmed that the classified inputs about the petitioner's involvement in grave acts prejudicial to the interest of the state, it was duly considered and it was found that he was unworthy of retention in the

service. It was also considered that looking into the nature and sensitivity of the matter, the trial by the Court Martial of the petitioner would be inexpedient and impracticable because other persons involved, some of whom were civilians were not subject to the Navy Act, for the purpose of conduct of Court Martial and also because the disclosure of the reports which contained information having direct bearing on the security of the state to the petitioner as well as other personnel involved was considered to be not in the interest of the state. Accordingly, the petitioner was dismissed from service in exercise of its powers of Section 15 of the Navy Act, 1957 read with Regulation 216. An affidavit was also filed by the Chief of Naval Staff Admiral Arun Prakash who denied any kind of involvement or to show any leniency to protect his so-called relation. He also denied the allegation that petitioner was being kept in custody without any orders

from any Commanding Officer or from any superior authority. The petitioner was also called for witness before the Board after giving him due caution that you are privileged to refuse to answer any question put to him. Such answers may expose him or get any penalty or forfeiture. All the allegations of maltreatment were denied and it is alleged that the petitioner never made any grievance of the same nor filed any statutory complaint and the Board of Inquiry was not an inquiry into the character of the petitioner or his reputation, it was mere a fact finding inquiry and it is alleged that on the basis of findings of Board of Inquiry the matter was placed before the Ministry of Defence and it was realized that it will not be reasonable to hold the Inquiry and petitioner was dismissed from service and it is alleged that there is no question of giving any opportunity to the petitioner in the matter as it was purely a Board of Inquiry to find out

causes for such leakage of national importance involved in the security of the State. It is also alleged that petitioner has already been booked by the CBI under the Official Secrets Act and facing a regular trial.

9. It was also contended that apart from petitioner other officers were also dismissed from service like Commander Vijender Rana who was also Naval Officer and third was Wing Commander Surve from the Air force. The Court of Inquiry against Wing Commander Surve was ordered under Air Force Act & Regulation but terms of reference were entirely different in that he was charged for serious omission and commission involving his reputation, therefore, he was given opportunity and there is no question of treating the case of petitioner similar with the Wing Commander Surve, as his terms of references was different. Therefore, both the enquiries are differently placed, so far Naval enquiry is concerned it was fact

finding inquiry and so far Wing Commander Survey, an Air Force Officer, is concerned he was alleged to be involved for omission and commission. Wing Commander Surve, as per Para 790 of the Regulation of Air Force 1964, in the Court of Inquiry was found guilty and a show cause notice was given to him and he was also dismissed from service u/s 19 of the Air Force Act, 1950 and u/s 16 of Air Force Rules, 1969, for act of misconduct as brought out in the Court of inquiry.

10. The learned Counsel for the petitioner has strongly urged that no reason has been recorded for his removal from service and he has not been given any opportunity to defend himself before the Board of Inquiry as required in Regulation 205 which is a serious violation of principles of natural justice. In this connection, learned counsel for the petitioner has invited our attention to the following judgements:

(i) State of Bihar Vs. Lal Krishna Advani & Ors. [AIR 2003 SC 3357]

(ii) Lt. Col. Prithi Pal Singh Bedi etc.etc. Vs. Union of India & Ors. etc.etc. [1982 (3) SCC 140]

(iii) R.P. Shukla V. Central Officer Commanding-in-Chief, Lucknow [AIR 1996 MP 233}

(iv) 1987 Labour law cases C 860 (2)

(v) Lt. Gen. Surendra Kumar Sahni V. Chief of Army Staff and Ors. [2008 (1) SCT 471]

(vi) Lt. Gen S.K. Dahiya V. Union of India & Ors [2007 Mil LJ Del 151]

11. Learned counsel has also alleged that serious malafides and discrimination in treatment that a personnel from Air Force who is charged under the Air Force Act and Court of Inquiry was been held against him and he has been given full opportunity and whereas the petitioner who has been charged under the Naval Act and no opportunity was given to him which is a serious violation of the Regulation 205 and in that connection learned counsel has invited our attention to following judgements:

(i) Union of India & Anr Vs. Tulsiram Patel [1985 (3) SCC 398]

(ii) State of Orissa V. Dr. (Miss) Binapani Dei & Ors. [1967 SC 1269 (Para 9)

(iii) Indian Railway Construction Co. Ltd. Vs. Ajay Kumar [2003 SC 1843 (9)]

(iv) Tarsem Singh Vs. State of Punjab & Othrs. [2006 13 SCC 581]

12. Similarly, learned Counsel appearing for Cdr. Vijendra Rana has also submitted that there is no mention in the order that why it is not reasonable and practicable to hold an inquiry and in this connection learned counsel has invited our attention to the judgement given by the Hon'ble Apex Court in the case of **Tulsi Ram Patel *(Supra)*.** It is also alleged that Article 310 is applicable in the present case and not the Article 311(2)(c). Learned Counsel also invited our attention to the case of **Tarsem Singh *(Supra)***. She alleged that copy of the Board of Inquiry was denied to the petitioner. She also alleged that

there was total non-application of mind and she invited our attention to the press release dated 28.1.2005.

13. Learned Additional Solicitor General has submitted that it was not reasonable and practicable to hold an inquiry as disclosure thereof would have compromised the national security. He also submitted that the Board of Inquiry was fact finding inquiry and in this petitioner was not charged, he placed before us the finding of the Board of Inquiry as well as the convening order to show that petitioners were not charged or their reputation were not questioned. This was a pure fact finding inquiry. In that connection learned counsel invited our attention to the Article 33 of the Constitution and Section (4) of the Navy Act and which reads as under:

Article 33 of the Constitution

"Power of Parliament to modify the rights conferred by this Part in their application to forces, i.e. to the Armed Forces "

Section 4 of the Navy Act

"The rights conferred by part III of the Constitution in their application to persons subject to Naval law shall be restricted or abrogated to the extent provided in this Act."

14. Therefore, the learned counsel submitted that officer of Armed Forces are entitle to rights conferred under Part III of Constitution to the extent provided in the Navy Act. Therefore, section 205 should be read in that context. Learned counsel also invited our attention to the definition of the Section 3 (22) of the Navy Act, 1957 which says that "*subject to Naval law means liable to be arrested and tried under this Act for any offence*" and it also referred to Section 85 of the Navy Act, 1957 which says that the person who is arrested shall be produced within 48 hours before the Commanding Officer or the prescribed authority. Therefore, the respondent has right to arrest the petitioner and produce him and release him within 48

hours. Learned Counsel invited our attention to the section 15 of the Act which reads as under:-

15(1) Every Officer and sailor shall hold office during the pleasure of the President

15(2) Subject to the provisions of this Act and the regulations made there under-,

(a) the Central Government may dismiss or discharge or retire from the naval service any officer or sailor;

(b) the Chief of the Naval staff or any prescribed officer may dismiss or discharge from the naval service any sailor.

15. In this connection learned counsel also invited our attention to Regulation 197 of the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965. This regulation has been framed in exercise of power under Section 184 of the Navy Act, 1957 by the Central Government and Regulation 197 contemplates Board of inquiry which reads as under:

"A board of enquiry may be convened by the Chief of the Naval Staff or any Administrative authority, or when two or more ships are in company, by the senior Naval Officer present, whenever any matter arises upon which he requires to be thoroughly informed.

16. Learned Counsel submitted that the Board of Inquiry can be constituted and convened by the Chief of Naval Staff or the Administrative Authority. Whenever any matter arises in which authorities wants to be thoroughly informed such inquiry can be ordered by Chief of Naval Staff or the Administrative Authority which is Chief Personnel Officer. He accordingly ordered Board of inquiry into this 'War room leakage" and it was not directed against petitioner. He has taken to the other provisions of Constitution and duties of Board of Inquiry. Regulation 203 which says that witnesses are not bound to answer which may expose them or get any penalty or forfeiture. In present case number of the witnesses were examined during inquiry including both petitioners. He also took us to Regulation 205 on which much emphasis was laid by both the counsel for petitioners that no opportunity was given as

was contemplated in the regulation 205 which is reproduced hereunder.

Regulation 205

> *"Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or reputation of a person in Government service or may result in the imputation of liability or responsibility for any loss or damage or is made for the contravention of any regulations or general or local orders, full opportunity shall be accorded to such person of being present throughout the inquiry and of making any statement and of giving any evidence he may wish to make or give and of cross-examining any witness whose evidence in his opinion affects him and producing any witness in his defence.*

17. Both the learned counsel for petitioners tried to submit that as per the provisions of this regulation whenever any inquiry affects the character or reputation of a person in Government Service or may result in the imputation of liability or responsibility for any loss or damage or is made for the contravention of any regulations or general or local orders, full opportunity shall be given to such person of being present throughout the inquiry and of may be

permitted to make any statement and of giving any evidence he may wish to make or give and of cross-examining any witness whose evidence in his opinion affects him and producing any witness in his defence.

18. Learned Addl. Solicitor General submitted that in fact this was not the Board of Inquiry against the character and reputation of a petitioners and it was only convened for the purpose to find out true facts and for the purpose of thoroughly informing the administrative officer about the so-called leakage in which both the petitioner were asked to appear. Learned Additional Solicitor General submitted that this Board of inquiry was conducted under Regulation 97 (Chapter VII) which lays down procedure for conduct of inquiry. Regulation 205 says when any reputation or character of officer is involved then he is required to be given full opportunity. In this connection learned Solicitor General produced before us the convening order of the

Board of Inquiry dated 21.7.2005. It is not necessary to reproduce whole of the order, suffice to reproduce the preamble of the same which reads as under:

> *"You are hereby required to assemble at DNO/IHQ MOD (N), New Delhi at 1000 hours on 22nd day of July, 2005 as a Board of Inquiry whereon RAdm Ganesh Mahadevan, VSM is to be the President and hold a full and careful investigation into the circumstances leading to recovery of a pen drive (Kingston 128 MB) from Wing Cdr Surve & Lt. Kulbhushan Parashar (Retd.) IN based on information received from Air HQs pertaining to classified Naval Presentations of Directorate of Naval Operations / IHQ MoD (N), thus leading to compromise of information pertaining to the Indian Navy, with reference to the following:*
>
> *(a) Possession of classified information by officer(s)/ personnel, not authorised to do so, wherein the information may have been stored in their Official or Personal Computers (residential), laptops or storage devices like Flash (USB) devices which then could have been transmitted to unauthorized person outside of the Indian Navy.*
>
> *(b) Unauthorized handling / possession of classified information with malafide intentions*
>
> *(c) Unauthorised dealing with foreigners / foreign or Indian vendors with malafide intentions*
>
> *(d) Financial circumstances of the officer(s) personnel with special regard to any transactions like acquisition of property, standard of living, etc. which are likely to indicate any unauthorised earnings.*
>
> *(e) Any incidents of working beyond working hours or during holidays by the officer(s) / personnel, which could*

have enabled them in surreptitiously acquiring classified information with the malafide intentions of passing it on to unauthorised person(s).

(f) Unauthorised use of official telephone(s) or cellular phones to aid any malafide activities.

(g) The possible involvement of any unauthorised woman / women in the compromise of security"

19. We bestowed our best of the consideration on rival submissions. In order to appreciate the controversy involved in the matter, it would be relevant to mention here that Board of Inquiry in order to find out the truth of matter contained in Chapter 3 of the Regulation, contemplates a detailed procedure for summoning of the witnesses and cross-examination of witnesses. The regulation 205 says whenever any character or reputation of the officer is involved then in that case opportunity is required to be given. In case the incumbent's reputation or character is involved then a reference to this effect has to be made in the convening order and in that case, the officer is required to be

given full opportunity to be present in the inquiry and to cross-examination of witnesses and to lead evidence in the matter. In fact the court of inquiry which have been ordered, the preamble thereof have been reproduced above would show that petitioner was nowhere charged nor his reputation was involved in this Board of Inquiry, therefore, the invoking of regulation 205 does not arise in this matter at all. The procedure prescribed in the chapter 3 of the Board of Inquiry is, as per regulation 197 convening order has to be issued and in 198 the Board of Inquiry is to be constituted. Under regulation 199, the President of the Board is appointed and under Regulation 200 details duties are mentioned of the Board. Then in Regulation 201, a declaration has to be made by the Members of the Board. Regulation 202 laid down the procedure that the Board shall be guided by the provisions of these regulations and also the

Naval Order in force from time to time and under the instructions of the convening authority. The Board can put such questions as it thinks desirable for testing the truth or accuracy of any evidence and otherwise for eliciting in the truth. Regulation 203 requires examination of witnesses and the warning is to be given to the witnesses that they are not suppose to answer the questions which may expose them or penalty or forfeiture. Person who is charged shall not give any statement or answer any question. Board may be re-assemble for examination of witnesses or recording further information. Board is required to sit in close doors. No person shall be present in the character of a prosecutor nor any friend or professional adviser is allowed to assist any person concerned in the inquiry. The Regulation 204 gives a power of summoning of witnesses and Regulation 205 lays down

the procedure when character and conduct of the person in Government service is involved, they will be given full opportunity. The regulation 206 lays down the evidence when to be taken on oath and regulation 207 says that the proceedings of a board or any confession or answer to a question made or given before a board shall not be admissible in evidence against the person subject to Naval laws and regulation 208 laid down how the minutes to be drawn and regulation 209 laid down certain copies may be given to the persons of proceedings.

20. Therefore, analysis of Chapter 7 of the Board of Inquiry makes it abundantly clear that whenever a Chief of Naval Staff or Administrative authority desires to be thoroughly informed of any matter, then an inquiry can be ordered. In case the inquiry is against any particular person involving his character or reputation then he is

required to be given full opportunity to cross-examine of the witnesses and be permitted to be present throughout the inquiry. But in case it is not against any particular person involving his character and reputation then it is not necessary to give any opportunity to such a incumbent. In that case proper procedure as given in Chapter VII is to be followed except 205 because this was a fact finding inquiry and not an inquiry into the character and reputation of both the petitioners. As such the Regulation 205 has no role to play. Learned counsel has cited number of cases as mentioned above pertaining to the Court of Inquiry in the Army Act and principle of natural justice required to be followed in such Court of Inquiry as contemplated in the Army Rule 180. Those cases have no relevance in the present context as per the convening order of the Board of Inquiry, no where charged the both the

petitioners involving their character and reputation. Therefore, the endeavour made by the counsel for the petitioners to discredit the Board of Inquiry on the ground that petitioner was not given proper opportunity and there was breach of natural justice has no role to play in the present case. As such, submissions of learned counsel for breach of principle of natural justice has no relevance what so ever.

21. Next question is with regard to the reasons to be recorded for dispensing with conduct of Board of Inquiry for dismissal of these two incumbents. In this connection, the Section 15 of the Act gives a power to the Central Government to dismiss or discharge or retire any Naval Officer or Sailor from service, however, subject to the provisions of this act and regulation made there under. Regulation bearing on the subject is regulation 216 which reads as under:

"(1) When it is proposed to terminate the service of an officer under section 15 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-regulation (2) against that action.

The provision of this regulation makes an exception in two contingencies the show cause notice is not required to be given:

(a) Where the service is terminated on the ground of misconduct which has led to his conviction by a civil court; or

(b) "Where the Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause:

22. As per Regulation 216, whenever the service of the incumbent is proposed to be terminated u/s 15 on account of misconduct then he shall be given opportunity to show cause in a manner specified in the sub-regulation (2) against that action. But exception has been carved out, which lays down that a show cause notice will not required to be given in a case where termination is on ground of misconduct or which led to its conviction by the Civil Court or where

Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause. Therefore, in view of these two exceptions, no show cause notice is required to be given before terminating the service of the incumbents. Article 310 says that tenure of the office of persons serving the Union or a State during the pleasure of the President or the Governor of the State as the case may be. Article 311(2)(c) says that President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. Therefore, so far as defence personnel are concerned as per Regulation 216 (b) specifically lays down that "*where the Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of*

showing cause". Therefore, a parallel can be drawn from the Article 311(2)(c) to interpret the provisions of regulation 216(b) of the Naval Regulations. The Regulation 216 (b) is an exception to a normal procedure giving of show cause notice, it can be dispensed with whenever the Central Government is satisfied that for reasons, to be recorded in writing that it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause. Therefore, the only requirement is a satisfaction of the Central Government for reasons to be recorded and those reasons has to be germane to the issue i.e. that it will not be expedient or reasonable practicable to give an opportunity to show cause. In this connection reference may be made to **Union of India Vs. Tulsi Ram Patel *(Supra)***

In that context, their Lordships observed that:

"Out of 'law and order', 'public order' and 'security of the State', the situations which affect 'security of the State' are the gravest. Danger to the security may arise from without or within the State. The expression 'security of the State' includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or Para military Forces. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force."

Their Lordships further observed that:

"The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. The satisfaction of the President or Governor must be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. An inquiry into the such act would lead to disclosure of sensitive information and about the source of information. Hence an enquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the state as much as those acts would. The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at a result of secret information received by the Government

about the brewing of danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. But the reasons for the satisfaction reached by the President or Governor under clause (c) cannot be required to be recorded in the order of dismissal, removal or reduction in the rank nor can they be made public. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review"

23. Therefore, the legal proposition laid down by the Constitution Bench in the case of ***Tulsiram Patel (Supra),*** squarely covers this case and their lordships categorically laid down that reasons for the satisfaction reached by the President or Governor under clause (c) cannot be required to be recorded in the order of dismissal, removal or reduction in the rank nor they can be made public. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction, and, therefore, it would not be a fit matter for judicial review.

24. Similarly, in the case of ***A.K. Kaul and Anr. v. Union of India & Anr.*** *[1995 (4) SCC 73]* their Lordships relying in the ratio laid down in the case of ***S.R. Bommai v. Union of India*** *[1994 (3) SCC 1]* laid down the scope of Article 311 (2) (c) that the order can be subject to judicial review on the ground of the satisfaction of the President/Governor being vitiated by the mala fides or being based on wholly extraneous or irrelevant grounds within the limits laid down in ***S.R. Bommai case***. Their Lordships have clearly laid down that the judicial review is very limited that is that the order should not be actuated by malice or being based wholly on extraneous or irrelevant grounds. Their Lordships has gone to the further extent that even if some of the materials on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action. Their Lordships further laid down that the truth

or correctness of the material cannot be questioned by the Court nor will it go into the adequacy of the material and it will also not substitute its opinion for that of the President. Their Lordships also laid down that the Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Union Council of Ministers are the best judge of the situation and that they are also in possession of information and material and we have to trust their judgment.

Therefore, their Lordships has reaffirmed the ratio laid down in ***Bommai's case*** *(supra)* that the judicial scrutiny in the matter is very limited.

25. In the present case Section 15 of the Navy Act, 1957 read with Regulation 216 of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965, this power has been delegated to central government and Chief of

Naval staff for subordinate officers. After the Board of Inquiry, the whole factual aspect was placed before the central government and the central government, after applying its mind, being satisfied with the material placed before it, recorded the reason that holding of Court Martial will not be conducive in the public interest and giving of show cause notice will further involve the security of the State. Therefore, on the basis of satisfaction recorded by the central government, the petitioner's services were dispensed with without holding any inquiry.

26. The original note sheet was placed before us for our perusal and after going through the same we are satisfied that on the basis of the cogent reasons recorded by the authorities that it will not be in public interest and the security of the State to give a show cause notice to the petitioner of holding of Court Martial

as the disclosure of the same will seriously prejudice the security of the country.

27. Learned counsel for the petitioners cited cases which involve all civilians and in that series of cases our attention was invited to a latest decision of Apex Court in the case of ***Tarsem Singh v. State of Punjab & Ors.*** *[2006 (13) SCC 581].* Their Lordships has held that grounds of not reasonably practicable to hold such enquiry must be based on objective criteria and the reasons for dispensing with the inquiry must be supported by documents. Their Lordships, after reviewing the facts of the case, came to the conclusion that in absence of any material to show that it was necessary to dispense with the formal inquiry in terms of proviso(b) to Article 311(2) and order of dismissal dispensing with formal inquiry cannot be sustained.

28. But, in the present case we have gone through the original papers of Board of Inquiry and the reasons which have been recorded for dispensing with the show cause notice, that it is not reasonable and practicable to hold inquiry as this will involve security of the State, therefore, we are satisfied on perusal of all the material that the authorities has rightly applied their mind on the basis of the material collected during the Board of Inquiry that it will cause a great damage to the security of the State as those material leaked from war room was of sensitive nature and disclosure of that would seriously compromise the security of the country. As such, we are satisfied that there was a subjective satisfaction arrived in an objective manner by the competent authority.

29. Lastly, it was also urged that there is a question of discrimination that in the case of Air Force officer a

regular Court of Inquiry was held, whereas, in the case of the Naval Officer i.e. the petitioners, no Board of Inquiry was held against them. The scope of both the inquiries i.e. holding inquiries under chapter VII of Navy Regulations and under the Air Force was different. In the case of Air Force the officer was charged for a serious omission and commission reflecting about his military reputation and the character, whereas, in the present case no such charge was leveled against these officers involving the reputation and character, but, the disclosure, which has come in the Board of Inquiry was so serious that authorities thought it proper not to order any further inquiry against the reputation and character of the petitioner and it was also realized that holding of inquiry and disclosing of the war room secrets will be more injurious to the security of the country, therefore, instead of resorting to a regular inquiry the authorities thought it proper on the basis of the material made

available that it will not be reasonable and practicable to hold such inquiry and they resort to provisions under Section 15 of the Navy Act, 1957 read with Regulation 216 of Navy (Discipline and Miscellaneous Provisions) Regulations, 1965. As such, there is no question of discrimination involved in the present case. Consequently we do not find any merit in both the cases and same are dismissed. No order as to costs.

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[Justice A.K. Mathur]
Chairperson

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[Lt. Genl. ML Naidu]
Member (A)

New Delhi
30th June, 2010