

No. 62/58/2022-1HR-I
HARYANA GOVERNMENT
HUMAN RESOURCES DEPARTMENT

To

1. All Administrative Secretaries to Government Haryana.
2. All the Heads of the Departments.
3. All the Divisional Commissioners of Haryana State.
4. All the Deputy Commissioners of Haryana State.

Date, Chandigarh, the 6th December, 2022

Subject:- Compliance of necessary provisions of proviso (b) to Article 311(2) of the Constitution of India- while dismissing a Government employee.

I am directed to invite your kind attention on the subject noted above and to say that in recent order dated 04 July 2022 passed by High Court in CWP No. 13285 of 2022 titled as *Vikas Vs. State of Punjab* Principal Secretary, Department of Home Affairs, Punjab Civil Secretariat, Chandigarh and others has directed as under:-

"This Court has noticed while dealing with the current roster, that a large number of writ petitions are being filed against the order of dismissal invoking Article 311(2)(b) of the Constitution of India. The competent authorities are ignoring the law as settled by the Supreme Court regarding dismissal of an employee under Article 311(2)(b) of the Constitution of India, which leads to the impugned orders being set aside.

It might be appropriate for the State Governments to look into this issue and apprise the competent authorities about the relevant case law pertaining to invoking Article 311(2)(b) of the Constitution of India at the time of seeking to summarily dismiss the Government employees.

Let a copy of this order be conveyed to the Chief Secretaries of the States of Punjab and Haryana as well as the Advisor to Administrator, U.T., Chandigarh."

2. The matter has been examined with regard to the provisions of Article 311(2) (b) of the Constitution of India in the backdrop of some judgments pronounced by the Supreme Court of India. The observations of the Supreme Court with regard to scope of Article 311(2)(b) of the Constitution of India are as under:-

(a) *Jaswant Singh Vs. State of Punjab & Others*, 1991 (1) SCT 125.

"The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authorities. When the satisfaction of the concerned authority is questioned in a Court of Law, it is incumbent on those who support the order to show the satisfaction is based on certain objective facts and is not the outcome of the whim and caprice of the concerned officer."

(b) *Sudesh Kumar Vs. State of Haryana and others* 2005 (11) SCC 525.

"11. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311 (2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly

show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order is that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23rd December, 1999, the Visa of the complainant was extended upto 22nd December, 2001. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry. 12. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution of India would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311 (2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant."

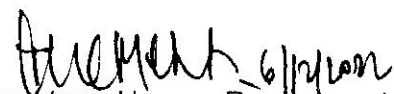
3. In view of catena of judgments, it is well settled that the subjective satisfaction of the competent authority for dispensing with regular departmental enquiry must be based on cogent material and regular enquiry cannot be dispensed with solely on the 'ipse dixit' of the concerned competent punishing authority. The condition precedent which must be satisfied before action under Article 311(2) (b) of second proviso taken against a Government servant is that holding of enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

At this stage, it is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the enquiry. Illustrative cases would be as follows:-

- (a) Where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or
- (b) where the civil servant by himself or with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or
- (c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time of attempt to hold the inquiry, the disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an inquiry or because the department's case against the civil servant is weak and, therefore, is bound to fail.

4. Therefore, it has been decided that so far as the employees of the State Government are concerned, the procedure indicative in above paras of this letter need to be followed hereinafter. However, all cases coming within the proviso (b) to Article 311(2) of the Constitution and the corresponding provisions of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 should invariably be submitted to the Competent Punishing Authority for necessary orders.

5. These instructions may be brought to the notice of all concerned for strict compliance and the receipt of this letter may also be acknowledged.


Deputy Secretary, Human Resources-I,
for Chief Secretary, Government of Haryana