

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11315 of 2015

Date of decision: 3.11.2015

Kulwant Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.G.S.Bal, Sr.Advocate, with
Mr.Mohan Singla, Advocate,
for the petitioner.

Mr.Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The petitioner is a directly appointed Assistant Sub Inspector of Police recruited in December, 1993. He was confirmed as ASI in February, 2003. He was promoted as Sub Inspector of Police on August 30, 2010 with effect from April 1, 2010 vide order P-1 issued by the Deputy Inspector General of Police, Patiala Range, Patiala. He was holding the officiating charge and rank of Inspector of Police and was posted as SHO of Police Station Kahnuwan in District Gurdaspur since December 27, 2013. A false report was made against him in May, 2014 charging him with dereliction of

duty. It was alleged that he apprehended two drug addicts/smugglers and let

them off without taking any action against them or informing his superior officials. Reacting to such a complaint, the disciplinary authority exercised his power to dismiss the petitioner by invoking the provisions of Article 311 (2)(b) of the Constitution of India. The regular inquiry was dispensed with. The statutory appeal was mechanically dismissed by the Deputy Inspector General of Police, Border Range, Amritsar. The revision petition filed before the Director General of Police, Punjab remains pending since August 21, 2014 gathering dust.

The charge against the petitioner is based on information reliably learnt that one Sewa Singh, a drug addict who indulged in the sale of drugs was nabbed by the police posted in Police Station Kahnuwan in possession of narcotic substance on May 18, 2014 but the petitioner then posted as Station House Officer let him off without taking any legal action against him. Similarly, one Joginder Singh was nabbed by the police of Police Station Kahnuwan 3 or 4 days before passing of the dismissal order on May 23, 2014 with narcotic substance but was in the same way let off without taking any legal action against him. Joginder Singh allegedly poses himself as a doctor and indulges in the sale of narcotics while moving from place to place and has already an FIR No.10 of January 6, 2008 under Sections 25, 54, 59 Arms Act registered against him at PS Dhariwal.

The Senior Superintendent of Police, Gurdaspur dismissed the petitioner from service on May 23, 2014 on a report verified by Jagjit Singh Saroy, PPS, SP [Detective], Gurdaspur suggesting that both Sewa Singh and Joginder Singh, drug smugglers were released for financial considerations and the petitioner has connived with the offenders who dealt with smack,

heroin and other narcotics etc. The punishing authority found no mitigating circumstances as the petitioner was a member of the disciplinary force and the role attributed to him he thought was intolerable, incorrigible and amounted to grave misconduct. The SSP records that having fully satisfied himself that regular departmental inquiry against the petitioner is not reasonably practicable as both the drug smugglers and the petitioner are beneficiaries and it shall also cause unreasonable delay as the drug smugglers are unlikely to depose against him and it for this avowed reason that the inquiry has been dispensed with and action taken under Rule 16.1 of the Punjab Police Rules, 1934 read with Section 7 of the Police Act, 1861 read with versatile Article 311 (2)(b) of the Constitution of India.

There is no doubt that the incident imputed against the petitioner on May 18, 2014 if proved was serious but since no inquiry was held the truth remains in suspended animation. The petitioner was dismissed within 5 days of the alleged occurrence. Mr. Bal argues that no effort was made to apprehend the alleged drug addicts and alleged smugglers of narcotics and the dismissal is based on information received through secret source. The source of information has not been disclosed to test its veracity and what is solely relied upon is the verification report made by the SP [Detective], Gurdaspur which is supposed to establish grave misconduct.

The conduct may be grave. The charge may be serious but the question is one of justice. The issue is whether regular inquiry could have been dispensed with of a permanent government employee in the circumstances of the case. Even assuming that the culprits are beneficiaries and are unlikely to depose against the petitioner but still that line of thinking

/investigation assumes as if the culprits have been apprehended, investigated and checked on their antecedents and it stands confirmed that they would speak the truth when called to join investigation or to participate in a departmental inquiry in case it was held. This is not a valid presumption to draw from the facts unknown.

Though a lot of latitude is available to the disciplinary authority to take recourse to Article 311 (2)(b) of the Constitution but visiting the petitioner with the severest and most drastic action which can be visited upon a person in the dock, the inquiry appears necessary to unravel the truth and truth must triumph. The law on the subject is well traversed and the Supreme Court ruling in **Union of India v. Tulsiram Patel**; AIR 1985 SC 1416 : (1985) 3 SCC 398 is the operating law. Applying the principles therein, it cannot be said that it was not reasonably practicable to hold an inquiry. To confront the petitioner with the report of the SP [Detective] I am inclined to think was the minimum guarantee to achieve the acceptable levels of fairness-in-action and to abide by the rule of *audi alteram partem* and the cherished principles of natural justice which ensure that no man should be condemned unheard. Article 311 (2)(b) of the Constitution is not designed to be lightly used and the government employees are not canon fodder.

I have heard Mr.Bal learned senior counsel appearing with Mr.Mohan Singla for the petitioner and Mr.Vaibhav Sharma in defence of the impugned order of dismissal.

The assessment of this Court on the material presented while hearing the matter in the magnitude of the punishment inflicted on the

petitioner is one that strikes the conscience of the Court as being excessive and not well founded on the law on the subject matter. It is not possible on the face of the impugned order or from the stand in the written statement to hold that a regular inquiry was not reasonably practicable and to assume that merely because a witness will turn hostile and there are chances of it happening the inquiry has to be dispensed with. This does not mean that a dismissal order can still be passed in conflict with the law on the subject and as a knee jerk measure to quickly get rid of a public servant unceremoniously without establishing his guilt on evidence. The action taken is far too drastic and disproportionate to the cause howsoever grave the charge may be but that should have been put through the mill of an explanation call or at least a fact finding or preliminary inquiry to consider necessity of a regular inquiry after apprehending the alleged drug addicts and the professed smugglers of narcotics and recording their statements. The police department had the wherewithal at their command. There is no evidence on record that the persons named are smugglers or how that word has been used without any incriminating evidence against them or whether they were simply addicts given to drugs and drug abuse. To send the drug addicts behind bars is not a solution to the menace. Such people need active help and to be dealt with the spirit of humanism and rehabilitation and to understand why they have chosen the path to drugs and devise ways and means to wean them away from the habit.

On case law Mr. Bal relies on a decision of the learned Single Judge of this Court in **Gurcharan Singh v. State of Punjab and others;** 2013 (1) RSJ 667 while applying the law in **Jaswant Singh v. State of**

Punjab; AIR 1991 SC 385 and in **Union of India v. Tulsiram Patel** [supra] in a case involving a Head constable in the Punjab Police. The allegations against Gurcharan Singh were that he was alleged to be mixed up with notorious robbers and chain snatchers' gang and was mixed up with certain bad elements. He offered criminals protection using his undue influence being a member of the police force. He had even allegedly received illegal gratification, stolen articles and valuable ornaments from the criminal gangs. He was dismissed under Article 311 (2)(b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules and Section 7 of the Police Act, 1861 holding that it was not reasonably practicable to hold a departmental inquiry as nobody would come forward to depose against him on account of fear of retribution from bad elements and accordingly, the disciplinary authority dispensed with the inquiry. This Court did not agree to the line of action adopted as being proper exercise of jurisdiction and set aside the dismissal order and held that the reason given by the respondents that nobody would depose against the petitioner on account of fear of the bad elements is not sustainable since no material had been placed on record reflected either in the impugned order or in the material placed before this Court to demonstrate that the subjective satisfaction arrived at by the authorities was based on objective criteria. This verdict is of help to the petitioner. It cannot be said that it was not reasonably practicable to hold an inquiry into the imputations of misconduct.

For the reasons recorded above, this petition is partly allowed.

The impugned order is set aside as illegal and unconstitutional. It is declared violative of the rights preserved and protections in Article 311 of

the Constitution of India. However, this order will not preclude the Police Department from holding a regular inquiry in accordance with law.

In case the revision petition still remains pending before the Director General of Police, Punjab, Chandigarh, the file may be treated as closed in view of the present order. Speedy justice is far more important than the red tape of administrative remedy at the revisional stage, in the facts and circumstances of this case

(RAJIV NARAIN RAINA)
JUDGE

November 3, 2015
Paritosh Kumar