

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16061 of 2014

DATE OF DECISION: OCTOBER 8, 2015

JAGBIR SINGH

...PETITIONER

VERSUS

CHANDIGARH ADMINISTRATION & ORS.

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. GAURAV MOHUNTA, ADVOCATE
AND MS. KOMAL ABROL, ADVOCATE
FOR THE PETITIONER.

MR. P.S.KANWAR, ADVOCATE
FOR RESPONDENTS NO.1 & 2.

M. JEYAPPAUL, J.

1. The writ petitioner joined service in Chandigarh Police Department as Constable on 19.5.1988. An FIR No.62 dated 12.3.2012 was registered as against him for the offences under Section 307, 506 and 120-B IPC on the statement of one Inspector Satpal of PCR van alleging that on 12.3.2012 the writ petitioner while on duty in PCR fired upon him in an inebriated state with an intention to kill him and also threatened him with dire consequences. The Sr. Superintendent of Police, U.T., Chandigarh issued the impugned order dated 14.3.2012 as follows:-

“3. After applying my mind to the facts and circumstances of the case, I am satisfied that it is not reasonable practicable to hold and inquiry in this case as there is full apprehension that

either the witnesses will be won over by these desperate delinquents in due course or they may not likely to come forward for evidence in the criminal case as well as departmental enquiry under threat, coercion or inducement by them.

4. Now, therefore, I Naunihal Singh, IPS, Senior Superintendent of Police, U.T., Chandigarh being your appointing authority under sub clause (b) of the provision of sub section (2) of Article 311 of the Constitution of India, hereby dismiss both, Constable Jagbir Singh No.2645/CP and Constable Baleer Singh No.2942/CP from the Government service, with immediate effect.”

2. The petitioner was also directed to vacate official house in his occupation on or before 13.4.2012 vide order dated 11.4.2012. He was also threatened with eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to get his house vacated by virtue of the order dated 30.4.2012.

3. The Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') referring to the decision of the Hon'ble Supreme Court in **Union Territory, Chandigarh and others vs. Mohinder Singh**, (1997) 3 SCC 68 and **Chandigarh Administration and others vs. Ex. S.I. Gurdit Singh** (1997) 10 SCC 430 held that the respondents have rightly invoked proviso (b) to Article 311(2) while dismissing the writ petitioner dispensing with the departmental inquiry.

4. It is relevant to refer to Article 311 of Constitution of India which reads as follows:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. -

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or

remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the 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.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

5. A Government employee shall be dismissed or removed only after holding an inquiry informing all the charges against him. Reasonable opportunity also will have to be given to him to challenge the evidence adduced as against him and also to lead rebutted evidence thereagainst. There are three exceptions which dispense with the inquiry being held after affording reasonable opportunity to the employee. Under one of the exceptions, the appointing Authority is empowered to dismiss an employee if it is satisfied for the reasons to be recorded that it is not reasonably practicable to hold such inquiry.

6. Learned counsel appearing for the writ petitioner would vehemently submit that the criminal case booked as against the writ petitioner had ended in conviction. Inasmuch as no star witness had turned

hostile, the reason assigned in the impugned order that the witnesses were likely to resile under threat, coercion or inducement by the writ petitioner is totally wrong.

7. *Per contra*, learned counsel appearing for the respondent-Chandigarh Administration rebutted the above argument contending that the case of a police official who had exhibited highest degree of indiscipline and committed willful dereliction of duty by opening fire upon his superior officer cannot be dealt with like any other normal case. On account of such a behaviour there was every likelihood that the witnesses would turn hostile on account of threat, coercion or inducement by the writ petitioner. In view thereof, it is submitted that the Sr.Superintendent of Police, U.T., Chandigarh has rightly invoked proviso (b) to Article 311(2) of the Constitution of India.

8. The reason assigned for dispensing with the usual departmental inquiry for the charges against the writ petitioner is that the writ petitioner was likely to threaten, coerce or induce the witnesses to resile from their original version in the criminal case and they might also avoid or refuse to depose in the departmental inquiry or in the Court proceedings.

9. On a careful perusal of the judgement passed by the Addl.Sessions Judge, Chandigarh in Sessions Case No.147 of 24.4.2012 decided on 31.10.2013, the police official who figured as star witness had not resiled from the original stand of the prosecution. The trial Court having held that though the offences punishable under Section 307, 506 and 120-B IPC were not established as against the writ petitioner, the evidence on

record adduced by the prosecution established that the accused-petitioner committed an offence punishable under Section 336 IPC and thereby, the writ petitioner was convicted and sentenced to undergo 3 months S.I. and to pay a fine of ₹250/- and in default, to undergo a further period of S.I. for 7 days.

10. It is a well settled proposition of law that the satisfaction arrived at by the appointing Authority shall be based on certain objective facts, but certainly not on the basis of the whims and fancies of the appointing Authority. The decision to dispense with the inquiry which is the norm to award the graver punishment cannot rest solely on the *ipsi dixit* of the appointing Authority.

11. It is not a case where the complainant who was serving as an Inspector in the PCR or any of the material witnesses who were none other than police officials suffered any statement before the appointing Authority that the writ petitioner started terrorizing them. Nor is it the case that the police official, who lodged a complaint expressed his unwillingness to pursue the complaint lodged by him. Such concrete materials should be available before the appointing Authority for taking a decision to dispense with the departmental inquiry.

12. In Mohinder Singh's case (supra), the Hon'ble Supreme Court has observed as follows:-

“We are not suggesting that because of clause (3), the court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the court should blindly accept