

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

CWP No.7918 of 2015
Date of decision: 14.07.2015

Lakhbir Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. RK Arya, Advocate for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

A writ in the nature of certiorari is prayed for, so as to quash the order dated 12.02.2014 (Annexure P1), passed by respondent No.5, vide which the petitioner was dismissed from service under Article 311(2)(b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, 1934 and Section 7 of the Police Act V/1861. As also the orders dated 26.06.2014, 01.11.2014 & 05.03.2014, passed by respondents No.2 to 4, respectively, whereby the appeals and even the revision petition preferred by the petitioner were rejected. A brief narration of facts that have led the matter to a current stage shall be expedient. Petitioner was appointed as Constable in Punjab Armed Police (PAP) on 05.09.1994. Pursuant to a complaint made by DRI, a criminal case RC 220 2012 E0010

CBI -DOU VI/EO-II, New Delhi dated 03.05.2012, under Section 120-B read with Section 489-B of the Indian Penal Code, was registered against accused Shakir Ali and Yusuf Ali @ Angrez, as they were found to be in possession of fake Indian currency valuing ₹ 15,79,500/-. During investigation, it was discovered that in fact a consignment, valuing ₹ 67 lacs, of the denomination of fake ₹ 500 & ₹ 1000 notes, was sent from Pakistan via Amritsar to Delhi. Investigations further revealed the involvement of the holder of a mobile number 97815-20206. And also that the said number was owned and possessed by the petitioner. Petitioner i.e. Constable 9/615, was concededly, posted on Guard duty at Railway Bridge Attari, District Amritsar. And as per records, he had proceeded on one day casual leave on 29.04.2012 and reported back on duty on 01.05.2012 at 10:40 am. Further, from 29.04.2012 to 01.05.2012, the connection i.e. mobile number of the petitioner was in transit from Punjab to Delhi via Haryana and returned following the same route. Investigating agency unraveled that between 29.04.2012 to 30.04.2012, seven calls were exchanged between the cell phone of the petitioner and that of accused Yusuf Ali @ Angrez. And consignment of fake Indian currency was delivered to the accused on 30.04.2012 near Petrol Pump, Loni Circle, Delhi. On an analysis of the matter in issue and the material on record, the disciplinary authority i.e. the Commandant, 9th Battalion, PAP, Amritsar,

concluded that as the only witnesses to prove the involvement and misconduct of the petitioner would be Shakir Ali and Yusuf Ali, who themselves were accused, it was out of question that they would ever depose against the petitioner. Secondly, petitioner himself being a police personnel and a member of the force could always pressurize the witnesses. And nobody, in this situation, was likely to come forward and depose against him. That being so, and the disciplinary authority being satisfied that it was not reasonably practicable to hold a departmental inquiry, dismissed the petitioner from service in exercise of power under Article 311(2)(b) of the Constitution of India, vide order dated 12.02.2014 (Annexure P1). Appeals preferred by the petitioner against the order of his dismissal were dismissed vide orders dated 26.06.2014 & 01.11.2014 by the DIG, Administration PAP, Jalandhar Cantt. and IG, PAP, Jalandhar Cantt., respectively. Likewise, the revision petition too preferred by the petitioner was dismissed by respondent No.2, vide order dated 05.03.2015 (Annexure P7). That is how, as indicated above, the petitioner is before this court.

I have heard learned counsel for the petitioner and perused the paper book.

Learned counsel for the petitioner submits that the petitioner proceeded on a casual leave on 29.04.2012 (AN) to see his ailing father and had, inadvertently, left his mobile phone in the Guard room. On 30.04.2012, when he reported

on duty his phone was delivered to him by his Incharge Head Constable Ranjit Singh 9/153. He was ignorant of the calls, if any, that were made from his mobile number. However, it is submitted that all this could be proved only if an inquiry was held against the petitioner and he had an opportunity to prove his innocence. Further, the decision of the disciplinary authority to dispense with the inquiry was arbitrary and was not based on any cogent material. Thus, the order being assailed (Annexure P1) is vitiated.

On an analysis of the matter in issue, I am of the considered view that the petition is wholly devoid of merit and is thus liable to be dismissed for the reasons that are being narrated hereinafter.

Concededly, a criminal case i.e. RC 220 2012 E0010 CBI-DOU VI/EO-II, New Delhi dated 03.05.2012, under Section 120-B read with Section 489-B of the Indian Penal Code, stands registered against accused Shakir Ali and Yusuf Ali @ Angrez. The prosecution version was/is that they were found to be in possession of fake Indian currency valuing ₹ 15,79,500/-. During investigation, it further transpired that a consignment of fake Indian currency valuing ₹ 67 lacs was sent from Pakistan to Delhi via Amritsar. Investigating agency unraveled the involvement of mobile phone number 97815-20206 in the crime, which concededly was/is owned and possessed by the petitioner. Records proved that the petitioner

was posted on Guard duty at Railway Bridge Attari, District Amritsar. Concededly, he proceeded on one day casual leave on 29.04.2012 and returned back on duty on 01.05.2012 at 10:40 am. The movement of the mobile phone No. 97815-20206 was tracked and the investigation revealed that from 29.04.2012 to 01.05.2012, the said connection was in transit from Punjab to Delhi via Haryana and back to Amritsar following the same route. And above all during this period i.e. from 29.04.2012 to 30.04.2012, seven calls were exchanged between the mobile number owned by the petitioner and that of accused Yusuf Ali @ Angrez. As per the prosecution version, the consignment was delivered to the accused on 30.04.2012. Concededly, the sim card was recovered by the CBI from the petitioner and is in its custody. That being so, the disciplinary authority concluded that the petitioner carried the consignment from Amritsar to Delhi to be delivered to the accused.

On an analysis of the facts and circumstances, emanating from the record, the disciplinary authority arrived at a conclusion that to prove the involvement and misconduct of the petitioner, the testimony of Shakir Ali and Yusuf Ali @ Angrez shall be extremely crucial, being the only witnesses. But they being accused themselves in a criminal case, it was wholly out of question that they would ever depose against the petitioner. Secondly, petitioner himself was a member of the

police force and there was every likelihood that he would pressurize the witnesses if an inquiry was held. Further, in this situation, nobody was likely to come forward and depose against the petitioner. That being so, the disciplinary authority recorded its satisfaction that it was not reasonably practicable to hold an inquiry against the petitioner. Ex facie, the sensitivity of the matter and its possible ramifications were duly factored in by the disciplinary authority before dispensing with the inquiry. Thus, it could not be maintained that the decision of the disciplinary authority is either bereft of any reason or was conjectural. Further, the disciplinary authority was seized of the conclusions arrived at during the course of investigation of a criminal case and the report dated 07.01.2014, of the CBI Economics Offence Unit – 6, New Delhi, and that formed basis of the opinion arrived at by respondent No.5. Thus, it is equally misplaced to suggest that the decision arrived at by the disciplinary authority was devoid of any basis. It would be apposite, at this stage, to refer to paragraph 130 of the decision rendered by the Hon'ble Supreme Court in Union of India and another v. Tulsiram Patel, 1985(3) SCC 398:

“The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the

words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

Ex facie, the provisions of Article 311(2)(b) of the Constitution of India does not postulate a situation where its either impracticable or impossible to hold an inquiry, but where its not reasonably practicable to hold one, in the opinion of a reasonable man taking a reasonable view. And as demonstrated above, the disciplinary authority having factored in all the pros and cons dispensed with the inquiry. The decision that certainly does not warrant any interference. Particularly, when the disciplinary authority concluded that

the petitioner was guilty of gravest act of misconduct. And despite being a member of the police force he not only compromised the national interest but could also be a threat to national security. Thus, it was concluded that his retention in service was neither in the public interest nor in the interest of the police department.

In the wake of the position, as set out above, no interference is warranted under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed, in limine.

July 14 2015
Rajan

(Arun Palli)
Judge