

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

**LPA No.402 of 2015(O&M)
Date of Decision: April 21, 2015**

The Inspector General of Police and others ... Appellants

versus

Surinder Singh ASI through LRs ... Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLEMR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Gurinder Singh, Additional Advocate
General, Punjab for the appellants.

HARINDER SINGH SIDHU, J.

This intra Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 29.04.2014 of the learned Single Judge in CWP No.9844 of 1990, whereby, the writ petition filed by the respondent Surinder Singh ASI (since deceased) (herein referred as 'the respondent') was allowed and the order of his dismissal was set aside.

The writ petition was filed challenging the order of dismissal dated 26.6.1986 (Annexure P-1) passed by Superintendent of Police-cum-Director, Punjab. The said order was passed in exercise of powers conferred under Punjab

Police Rules 16.1(2) read with second proviso clause (b) of Article 311(2) of the Constitution of India. The appeal filed by the respondent was dismissed by the DIG (Computerisation & Wireless), Punjab vide order dated 8.4.1988 (Annexure P-3). He thereafter filed a representation praying for reinstatement which was dismissed vide order dated 22.3.1990 (Annexure P-4).

The order of dismissal mentioned that ASI Surinder Singh had been participating in the meetings of AISSF (Kahlon Group) and had been indulging in activities prejudicial to the security of the State and maintenance of public order. He had exhibited gross indiscipline unbecoming of a police officer entrusted with the duties of maintaining security of State. It was recorded that the punishing authority was satisfied that it was not reasonably practicable to hold regular departmental enquiry against him.

Respondent challenged the aforesaid order by filing the writ petition, which was allowed.

The appellants sought to justify the dismissal order by stating in the written statement that a CID report revealed that the petitioner had been actively participating in the functions of AISSF (Kahlon Group). It was stated that the dismissal order was passed after the authorities were satisfied that departmental enquiry was not possible as the witnesses

would not depose against the respondent due to his affiliation.

Learned Single Judge examined the case in the light of the legal position as settled by the Hon'ble Supreme Court that the subjective satisfaction of the disciplinary authority that it was not reasonable practicable to hold departmental enquiry must be based on some objective material to lend credibility to the decision to dispense with the enquiry. During the course of the hearing, the learned Single Judge called upon the State to bring the material, on the basis of which, the action was taken against the respondent. The sole material placed before the Court was a secret note said to have been issued by the Senior Superintendent of Police to the Superintendent of Police stating that ASI Surinder Singh (respondent) was present on the stage when an announcement was made by the convenor of Jalandhar Circle Unit of AISSF (Kahlon Group) calling upon members of the audience to enroll by taking '*amrit*'. Learned Single Judge noted that there was no objective material indicating the participation of the respondent in the meeting and no witnesses to his said participation had been identified, who had confided to any police official that they were aware of his presence in the meeting but would not be able to testify about that fact due to fear of injury in the circumstances then prevailing. Thereby, the Ld. Single Judge concluded that

there was complete lack of objective material, on the basis of which satisfaction that it was not reasonably practicable to hold an enquiry could be formed and an order of dismissal in terms of Article 311(2)(b) could have been passed. The relevant observations of the learned Single Judge are reproduced hereinbelow:

“4. xxx xxx When the case had been taken up for arguments, I directed the counsel for the State to share with the Court any material on the basis of which such a decision was taken. The counsel refers me to a secret note said to have been issued by the Senior Superintendent of Police to the Superintendent of Police where it is stated that ASI Surender was present on the stage when an announcement was made by the convener of Jalandhar Circle Unit of AISSF (Kahlon Group) calling upon members of the audience to enroll by taking amrit. If it was a serious issue of indiscipline then it must be substantiated by a much more essential feature that would require to be answered viz; a substantiation of what makes an enquiry practicably impossible. I do not see any basis in the communication by the SSP to the SP. In the file brought before me, the file contains a handwritten noting of letter from the IG of Police issued on 19.06.1986 regarding the dismissal of ASI where the Superintendent of Police has written that it is not reasonably practicable because "the witnesses are not likely to depose against him because of fear

of injury to have by the extremists of AISSF Khalsa Group.” The flaw in this order must be seen from the following factors. One, If there was an information that the petitioner had participated in the meeting, there ought to be some objective materials for such participation. I do not find any such material. Two, if there was an apprehension that no one would depose about his participation then the persons could have been identified as witnesses and it must have been information elicited before coming to a decision that they cannot disclose these details for fear of injury. Such a statement must have been elicited from any person, who had personal knowledge of the petitioner's participation in the so-called meeting. If only they had expressed in confidence to a police officer that they were personally aware of the petitioner's participation but they shall not be able to testify anywhere for fear of physical injury, then it could be stated that the higher officials had reasonable justification to hold that it was not practicable to hold a regular departmental enquiry. Even such information has not been obtained in confidence.”

Learned counsel for the appellants has argued that the decision of the authority in dispensing with the enquiry under second proviso (b) of Article 311(2) of the Constitution should be appreciated in the light of the then prevalent highly disturbed situation when the State was going through an unfortunate phase of terrorism. In such a situation, no person

could be expected to come and depose against a Police Official, who was allegedly siding with the militants.

Ld. Counsel may be right about the situation then prevailing. It cannot be doubted that the subjective satisfaction of the authority to dispense with the enquiry has to be examined in the context of the contemporaneous situation. As observed by the Hon'ble Supreme Court in **Southern Railway Officers Assn. v. Union of India**, (2009) 9 SCC 24, at page

38 :

“30. An order of a disciplinary authority in a case of this nature, as laid down by this Court in Tulsiram, must be judged by a court exercising power of judicial review by placing himself in his armchair. The disciplinary authority was a man at the spot. He acted on the basis of a report made to him. He also knew about the written poster having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority but also the appellate authority, having regard to the materials brought on record, arrived at the said finding.”

But the aforesaid does not mean that in an adverse situation the Constitutional safeguards can be given a complete go by. It has been repeatedly emphasized by the Hon'ble Supreme Court that second proviso (b) to Article 311(2) is an exception and as such an exceptional situation must be shown to exist on the basis of relevant facts. In

Prithipal Singh v. State of Punjab, (2006) 13 SCC 314, at
page 318, it was held as under :

*“Holding of a departmental proceeding is the rule.
The second proviso appended to Article 311(2) of
the Constitution of India provides for an exception.
It is a trite law that existence of such an
exceptional situation must be shown to exist on the
basis of relevant materials.”*

The Ld. Single Judge has rightly concluded that
there was absolutely no objective material to justify the
satisfaction that it was not reasonably practicable to hold
enquiry. We find no infirmity in the same.

The appeal is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 21, 2015
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