

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

1. LPA No.904 of 2015(O&M)

State of Punjab and another -----Appellants

Versus

Daljit Singh -----Respondent

2. LPA No.905 of 2015(O&M)

State of Punjab and another -----Appellants

Versus

Balbir Singh -----Respondent

and

3. LPA No.906 of 2015(O&M)

State of Punjab and another -----Appellants

Versus

Rajinder Singh -----Respondent

Date of decision: July 02, 2015

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

Present:- Mr.Gaurav Garg Dhuriwala, DAG, Punjab

HARINDER SINGH SIDHU, J.

CM-1888-LPA-2015 in LPA-904-2015:

CM-1891-LPA-2015 in LPA-905-2015:

CM-1894-LPA-2015 in LPA-906-2015:

For the reasons stated in the applications, the same are allowed and delay in filing the Letter Patent Appeals is condoned.

Letters Patent Appeals:

This judgment shall dispose of three intra-Court appeals, referred to above, filed under Clause X of the Letters Patent against the judgment dated 17.12.2014, passed by Learned Single Judge, whereby, CWP Nos.2881, 3307 and 3307 of 2013 filed by the respondents challenging the orders dated 1.2.2007 dismissing them from service by resorting to the provisions of Article 311(2)(b) of the Constitution were allowed. The impugned orders were quashed and the appellants were directed to reinstate the respondents in service forthwith with all consequential benefits.

For adjudicating the issues, the facts are being referred from LPA No. 904 of 2015.

The respondent was working as Assistant Superintendent of Police and was posted at Central Jail Ludhiana. On the night intervening 26th /27th January, 2007 between 2.00 and 6.00 AM, two under-trials escaped from judicial custody by scaling 16 feet high wall of the jail using bamboo sticks. The respondent had been deployed at night duty on 26th / 27th Jan., 2007.

On the matter being reported to the police by the Superintendent, Central Jail, FIR No.21 dated 27.1.2007 under sections 223/224 IPC P.S.Division No.7, Ludhiana was registered against the said under-trials and the guilty officials. The Assistant Inspector General of Police Punjab was deputed to conduct an inquiry at the spot regarding the escape of two under trials, who after visiting the spot on 27.1.2007, recorded the statements of witnesses

perused jail records and submitted the report pointing out lapses on part of the respondent and two other officials namely Shri Rajwinder Singh, Warder and Shri Balbir Singh, Warder.

Vide order dated 1.2.2007 the respondent and three other named officials were dismissed from service by resorting to the provisions of Article 311 (2) (b) of the Constitution of India.

Aggrieved, the respondent and the two other officials whose services were similarly terminated filed writ petitions challenging their dismissal which were allowed by the impugned order.

In the order of dismissal dated 1.2.2007 it has been recorded that as per Para No. 332 of the Punjab Jail Manual it is the duty of the Assistant Superintendent to visit all the parts of the jail at night, to ensure that all officers on duty remain alert and moving on their beats, that lamps are showing sufficient light and to report any unusual occurrence that may be observed in a book maintained for the purpose. But the respondent failed in his duties as a result of which the escape occurred. It has been stated that if the respondent had performed his duties sincerely and carefully, the under-trials might not have escaped from the spot by scaling the wall by taking the advantage of iron cutter and bamboo sticks. Thereby the respondent committed a grave misconduct being a member of the disciplined force. Keeping in view the sensitive nature of the duty he was expected to maintain close vigil and to ensure that everything was normal and in order.

On the issue of dispensing with the enquiry it was recorded by the punishing authority, that under normal circumstances, he would have liked to initiate departmental inquiry against the respondent for taking disciplinary action against him but seeing the gravity of misconduct and circumstances he was of the considered view and satisfied on proper application of mind that it is not practicable and possible to hold a departmental inquiry against him. His retention in service is no longer desirable and is not in the interest of the department which takes custody of smugglers/murderers/ hardcore criminal and offenders of heinous crime.

In the written statement filed on behalf of the appellant the action of dispensing with the enquiry was justified by observing as under in paragraph 2 of the Preliminary Objections as under:

“The present writ petition is not maintainable as the fact remains that the admitted case of the petitioner is that he was on duty as a Assistant Superintendent and was incharge for the said night when the incident took place. The duties of Assistant Superintendent have been prescribed in paras 322, 327 and 332 of the Punjab Jail Manual. It cannot be disputed that gross misconduct has been committed by him by violating the said duties as prescribed in the Punjab Jail Manual. The inquiry if any can be held only on the basis of oral evidence. In the present case, the oral evidence that could have been there was only of a hard core criminal/ under trial/ accused/ prisoner, who was/ were confined in the prison. The petitioner being in charge/ an authority to control

their activities, it could not be accepted that the said prisoners would have spoken anything against the petitioner. Thus the crucial and material element would not have been available against the petitioner. Since violation of admitted responsibilities was involved, therefore to send a signal of strict warning among the other jail officials also so that none prisoners could escape in future/no jail official takes his duties lightly, the answering respondent in its wisdom thought it proper to impose the punishment of dismissal by invoking the provisions of Article 311(2) (b) of the Constitution of India.”

Further it is stated in paragraph 4 of the written statement as under:-

“There are approximately 2200 prisoners in Ludhiana Jail and the answering respondent No.2 could not have taken any leniency in the matter so that tomorrow no such misconduct may be reported. A criminal on run due to violation of duties by the petitioner is a source of danger to everyone.”

Learned Single Judge observed that no reasons have been recorded in the order as to why the respondent has been dismissed from service without holding enquiry. It was observed that the subjective satisfaction of the disciplinary authority to dispense with the departmental enquiry is not based on any material, leave aside the objective assessment of the material available, from which such a prima-facie finding could be reasonably arrived at. It was held that neither the foundation nor the motive of the order showed proper application of the mind. Accordingly, the writ petition was

allowed.

Learned counsel for the appellant has relied on a decision of Hon'ble Supreme Court **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh**, 2015(2) S.C.T. 548 to contend that in similar circumstances of jail escape by the under trials, the dispensing with the enquiry under Article 311 (2) (b) was held justified and the dismissal of the jail officials was upheld.

In our view, the said judgment does not in any manner further the cause of the appellants. In that case, the dismissed officials, at the relevant time, were holding charge of the post of Deputy Superintendent of police, Assistant Superintendent of Police, Head Warder and Warder in the Model Jail, Burail. While they were discharging their duties, four under-trials, who were facing trial for the assassination of a former Chief Minister of Punjab and another under-trial, who had been tried on the charge of murder, escaped from the Model Jail, Burail by digging an underground tunnel, approximate length of which was 94 feet. It was concluded that the digging of the tunnel would not have been possible without the involvement of the officials in the conspiracy to facilitate the escape of the under-trials by willfully neglecting their duties. On the question of impracticability of an enquiry, it was observed that the escaped under-trials were linked with the Babbar Khalsa International and other terrorist organizations involved in anti-national and anti-social activities and thereby no witness was likely to come forward to depose against the officials. It was, in these circumstances, the

Hon'ble Supreme Court held that dispensing with the enquiry was justified.

In this case, the Hon'ble Court spelt out the three ingredients that are required to be satisfied for invoking Article 311(2)(b) of the Constitution, by observing as under:

“15. Before delving into the pointed issues canvassed at the hands of the learned counsel representing appellant/petitioners, it is necessary for us to notice the parameters laid down by this Court for invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. Insofar as the instant aspect of the matter is concerned, the norms stipulated by this Court for the above purpose, require the satisfaction of three ingredients. Firstly, that the conduct of the delinquent employee should be such as would justify one of the three punishments, namely, dismissal, removal or reduction in rank. Secondly, the satisfaction of the competent authority, that it is not reasonably practicable to hold an inquiry, as contemplated under Article 311(2) of the Constitution of India. And thirdly, the competent authority must record the reasons of the above satisfaction in writing.”

The three ingredients are first , that the conduct of the delinquent employee should be of such gravity as would justify imposition of one of the three punishments, namely, dismissal, removal or reduction in rank. The second ingredient was that the competent authority should be satisfied that it is not reasonably practicable to hold an inquiry, as contemplated under Article 311(2) of the Constitution of India. Thirdly, the competent authority must record the reasons for the said satisfaction in writing.

The Hon'ble Supreme Court on going through the facts of that case, was satisfied that all the three ingredients were satisfied. But the facts of the present case do not reveal

that all the three ingredients are satisfied.

What has been alleged against the respondent is negligence in performance of duty. There is no allegation of connivance or conspiracy in facilitating the escape of the under trials. One of the under trials who escaped was facing trial in a case under the NDPS Act and the other was facing trial in a case under section 460 IPC.

Secondly, there is no objective material disclosed either in the order or in the written statement based on which the subjective satisfaction of the authority that it is not reasonably practicable to hold the enquiry could be based.

Thirdly, there is no reason recorded for the satisfaction that it is not reasonably practicable to hold the enquiry.

Accordingly, we agree with the Ld. Single Judge that the impugned order dismissing the respondent from service is unsustainable and liable to be quashed. The Ld. Single Judge has already left it open to the appellants to hold an enquiry against the respondents should they so desire.

Thus, there is no merit in these appeals and the same are dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 02, 2015

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