

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

CWP No. 13107 of 2014
Reserved on 18.03.2016
Date of decision: 12.04.2016

Nirmal Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. A.K. Walia, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

G.S.SANDHAWALIA, J.

The petitioner, who is an Ex-Warder and was on duty in the Sub Jail, Pathankot, challenges the order dated 17.09.2013 (Annexure P-1) passed by respondent no. 3 whereby, he has been dismissed from service under Article 311(2)(b) of the Constitution of India. Challenge has also been raised to the order dated 23.04.2014 (Annexure P-6) whereby, his appeal has been dismissed by respondent no. 2. The reasons which weighed with respondent no. 3, which are apparently in conflict with each other while passing the order of dismissal, are that a preliminary inquiry had been conducted by the Superintendent, Sub Jail and on the basis of his report, a recommendation had been made that he be dismissed from service. The alleged reasons were that one undertrial namely Amit Sharma had been incited and provoked to file a false complaint against the jail administration by the petitioner. The petitioner had also been held guilty of making phone

calls to the relatives of the said undertrial for personal works and harass them. Apart from the said fact, it is alleged that he had put on a wrong batch of Head Warder during his duty and carried two stripes. The explanation had been called for and accordingly, the reply not being satisfactory, a finding was recorded that it was difficult for the department to prove the charges against such delinquent officials through a departmental inquiry and it would not be in government interest to keep such officials in the jail department. Resultantly, being the competent authority under the Punjab Jail Department State Services (Class-III Executive) Rules, 1963, finding the petitioner guilty, it was held that it would be not necessary to hold further inquiry and that it was not reasonable and practical to hold such inquiry. The petitioner's appeal has been dismissed by noting as under:-

“This Ex-Warder Nirmal Singh No. 3320 appeared before me for personal hearing on 16.04.2014. During personal hearing this Ex-official only reiterated his submissions made in the appeal and apart from that, he could not furnish any satisfactory explanation, but only made a prayer that he may be reinstated in service and he will not repeat such mistake. After carefully considering the service record and the comments furnished by the punishing authority, it has been found that the orders of dismissal from service passed by the punishing authority are in accordance with rules and law. Therefore, this appeal is found to be without any merit and substance and is hereby dismissed.”

This appellate order itself is liable to be set aside on the ground that no reasons have been given in support of the decision making process

in spite of the fact that serious civil consequences are involved in the case of the petitioner who had been in service since 1989. It is settled principle that reasons in support of the order are to flow specially since the said respondent was exercising the power of a statutory appeal.

Reliance can be safely placed upon the judgment of the Apex Court rendered in ***Harbhajan Singh Dhalla vs. Union of India, AIR 1987 SC 9*** wherein, it was held that while the observance of the principles of natural justice are required but there should be reasons which should support the decision even if it is an administrative order. The relevant paragraph reads as under:-

“26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that decision must be expressed in such a manner that reasons can be spelled out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and

explicit reasons. Such reasons must be on relevant material factors objectively considered- There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country.

Similar view has been taken in ***Union of India and others vs. Jai Prakash Singh and another, AIR 2007 SC 1363***. Relevant paras read as under:-

“7. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

8. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of

mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

Coming back to the order whereby the dismissal has been effected under Article 311(2)(b) of the Constitution of India, the case of the petitioner specifically is that an undertrial Amit Sharma had filed a complaint which had been addressed to the Home Secretary, New Delhi in which it had been claimed that there is a danger to him in the sub jail. Further allegations had been made that the food quality was very poor and electricity connection was not dependable. Three air conditioners had been installed in the quarters of the Deputy Superintendent without any electric meter and the said person was not paying any attention to the complaints. The food and medicines were not available and surprise checking was prayed for in the complaint (Annexure P-2/T). On the other hand, it is the allegation of the department that the petitioner had instigated the said undertrial to file the complaint. It is further the case of the department that an affidavit had been given by the father of the said undertrial that he was being harassed by the petitioner and he was asking him to get his transfer done, failing which, he would harass his son. Another reason in the order passed was that the petitioner was projecting himself as a Head Warder and, therefore, had violated the Punjab Jail Manual and Conduct Rules, 1966.

The pleaded case of the petitioner thus is that the complaint had been submitted against respondent no. 5 who himself made an inquiry

against the petitioner and obtained a statement of said Amit Sharma and his father and thereafter, respondent no. 3 had passed the order in a mechanical manner and dismissed the petitioner. The order reads thus:-

“The Superintendent, Sub Jail, Pathankot vide his office letter No. 3126 dated 29.08.2013 has submitted a preliminary enquiry report after conducting a preliminary enquiry and has recommended that Warder Nirmal Singh No. 3320, Sub jail, Pathankot, at present Sub Jail, Patti, son of Sucha Singh, Caste Majhbi resident of village Badyal, P.O. Sandhu Chatha, Tehsil and District Kapurthala, may be dismissed from service.

The Enquiry Officer Sh. Vikramjit Singh Penthe, Deputy Superintendent, Sub Jail, Pathankot, vide his letter No. 3126 dated 26.08.2013 has written that Warder Nirmal Singh No. 3320 posted in this jail incited and provoked undertrial Amit Sharma son of Narender Sharma to file a false complaint against the jail administration, and has attempted to spoil the atmosphere in the jail. He also made phone calls to the relatives of undertrial Amit Sharma for his personal works without getting any approval, and harassed them. This official is a Warder but he on his own puts on rank of Head Warder during his duty or some times he carries two stripes (two fities). The proof is attached with the enquiry report. During the enquiry, on a prayer made by this official, he was granted full opportunity to cross examine undertrial Amit Sharma on 28.08.2013. During cross examination, the undertrial Amit Sharma stated that he had submitted complaint against the jail administration at the instigation of Warder Nirmal Singh. The Superintendent Sub Jail, Pathankot vide his letter No.

3094 dated 26.08.2013 and letter No. 3091 dated 26.08.2013 called for explanation of this Warder. The official submitted his explanation of this Warder. The official submitted his explanations on 27.08.2013, which were not considered satisfactory. This official being a Warder, on his own put on the rank of Head Warder or some times put on two stripes and being a jail official, has conspired against his own department/jail administration, which is in violation of Punjab Jail Mannual and Government conduct Rules, 1966 and is also a criminal offence. All the allegations against this official stands proved and a prima facie case is made out. The integrity of this official is doubtful and Warder Nirmal Singh No. 3320 is not fit for Government service.

Therefore, it will not be in government and public interest to retain such official in the jail department because this official instigated persons against the officers of the jail department and got filed false and baseless complaints against them and this official also contacted the relatives of the undertrial on mobile phone and has committed gross violation of Rules of Punjab Jail Mannual. Such officials out of some greed or deliberately conspire with dangerous inmates and at that time the security of the State and the economy is badly affected. Therefore, it becomes difficult for the department to prove charges against such delinquent officials through a departmental enquiry. Therefore, such officials are a blot on the name of the jail department and it will not be in government interest to keep such officials in the jail department. Warder Nirmal Singh was given an opportunity of personal hearing on 03.09.2013 but during personal hearing also, the official could not

present any material which could mitigate his fault.

Therefore, I Amrik Singh Waraich, PPS, Superintendent of Police, Head Quarter Jail, Amritsar being the competent authority (Punishing Authority) under Appendix B4(B) of the Punjab Jail Department State Services (Class-III Executive) Rules, 1963 and on having been found guilty in the enquiry report of Sh. Vikram Panthe Deputy Superintendent and in these circumstances not considering it necessary to hold further enquiry it is not reasonably practicable to hold such enquiry, hereby dismiss Warder Nirmal Singh No. 3320, Sub Jail, Pathankot, now Sub Jail Patti from service w.e.f. 17.09.2013 A.N., under Article 311 (2)(b) of the Constitution of India. Copy of the orders may be immediately served on the concerned official and his acknowledgment may be sent for record and an entry may be made in his service book.”

It is settled principle that for passing such an order dispensing with the departmental enquiry, a finding has to be recorded that it is not reasonably practical to hold an inquiry and the reasons have to be recorded in writing in support of the satisfaction. The reasonableness and practicality of the same has to be judged in the light of circumstances prevailing at the time of passing of the order.

In the present case, the allegations primarily revolve around the undertrial Amit Sharma being harassed. Nothing has been as such recorded as to why the petitioner could not have been departmentally proceeded against for imposition of major penalty and why the statement of Amit Sharma could not have been recorded in such proceedings in a regular departmental proceedings. The other charge was of putting up a show that he was a Head Warder and donning the stripes of rank. Even for this,

nothing has been recorded as to how an inquiry could not have been done and how it was not reasonably practical to resort to such a recourse as the same would have been done in the presence of other employees and undertrials/convicts. The father of the said complainant, whose affidavit the State is now relying upon, could have also been examined alongwith the call records to prove the misconduct of the petitioner. Thus, the prescribed procedure has not been followed and a short cut has been taken to get rid of the petitioner without any justified reasoning. The orders, thus, dispensing with the holding of the inquiry on the ground that it would not be in government interest to keep such officials is legally not justifiable as nothing has come forth from the impugned order dated 17.09.2013 that it was not reasonably practical to hold such inquiry.

It is also apparent from the reading of the order that on one hand, on the basis of a preliminary inquiry, the petitioner has been dismissed from service in a summary manner by taking the affidavit of the father of Amit Sharma on 24.08.2013 and calling for the explanation of the petitioner on 26.08.2013, which was submitted on 27.08.2013. The preliminary inquiry report was thereafter forwarded on 29.08.2013 by the Superintendent, Sub Jail recommending the dismissal of the petitioner, which has been wrongly accepted by respondent no. 3. This exercise is in contradiction to the law laid down by the Apex Court in ***Union of India vs. Tulsiram Patel, 1985 (3) SCC 398.***

The said view was followed in ***Jaswant Singh vs. State of Punjab and others, 1991 (1) SCC 362.*** It was held that the decision to dispense with the departmental inquiry cannot be on the outcome of the whim or caprice of the concerned officer. The relevant observations read

thus:-

“The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the counter filed by the third respondent it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc., when he was in hospital. It is not shown on what material the third respondent came to the conclusion that the appellant had thrown threats as alleged in paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. The third respondent's counter also does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with the inquiry envisaged by

Article 311(2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained.”

In ***Ex-Constable Sangram Singh vs. State of Punjab and others, 1995 (3) RSJ 161*** the said view was followed. The relevant portion read thus:-

“16. From the above quoted decisions it is clear that an order of dismissal or removal passed under Article 311(2)(b) is open to judicial review and can be invalidated if the Court is convinced that the competent authority has exercised the power without application of mind to the relevant consideration. Validity of an order passed under Article 311(2)(b) can be challenged on vstioud grounds including the following ones :-

(1) Where the authority whose satisfaction is in question has totally failed to apply its mind to relevant considerations.

(2) Where its satisfaction is based on considerations, which are not relevant.

(3) Where the satisfaction is arrived at by the application of a wrong test or where the right questions are not asked.

(4) Where the satisfaction is not grounded on materials which are of rationally probative value.

(5) Where the exercise of power is not in good faith.

Recently, in ***Risal Singh vs. State of Haryana and others, 2014 (13) SCC 244***, the decision of the authorities to dispense with the service of a police official by invoking Article 311(2)(b) of the Constitution of India on account of his being involved in a corruption sting operation in a television channel was set aside alongwith the order of the High Court

which had opted not to interfere in the said dismissal order.

In *Ved Mitter Gill vs. Union Territory Administration, Chandigarh, 2015 (8) SCC 86*, the above said principles were again reiterated while upholding the order of dismissal.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the said impugned orders dated 17.09.2013 (Annexure P-1) and 23.04.2014 (Annexure P-6) cannot be justified and are accordingly set aside. The writ petition is allowed and the petitioner will be accordingly be taken back in service within a period of 2 months from the date of receipt of certified copy of the judgment. However, the observations made herein shall not, in any manner, debar the authorities to initiate proceedings against the petitioner in accordance with law and with a hope that it would be done with a objective manner and not vindictively on account of the fact that the petitioner has been successful in the present round of litigation.

12.04.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

