

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

CWP No.13445 of 2016

Date of Decision: 13.12.2016

Gurbans Singh Bains

....Petitioner

Versus

The State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.S. Khehar, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab
for the State.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 27.03.2014 (Annexure P-1) passed by respondent No.3, whereby, the petitioner has been dismissed from service with immediate effect by invoking the provisions of sub-clause (b) of the second proviso to clause (2) of Article 311 of the Constitution of India and order dated 11.04.2016 (Annexure P-5) passed by respondent No.2, whereby, the appeal filed by the petitioner has been rejected.

Briefly, the facts of the case, as made out in the present petition, are that initially the petitioner joined the services in the Police Department on 31.01.1990. He was confirmed in the rank of Assistant Sub Inspector w.e.f. 01.04.1993 and was brought on promotion List E-1 w.e.f. 01.11.1993. Thereafter, he was promoted as officiating Sub Inspector w.e.f. 11.03.1995. His name was brought in promotion List "F" (Executive) on

30.06.2005. Subsequently, he was promoted to the post of officiating Inspector of Police vide order dated 27.08.2006. He was granted charge and rank of DSP vide State Government (Home Department) order dated 24.07.2013.

An FIR No.45 dated 27.03.2014 was registered under Sections 7/8/13(1)(a)(d)(e) of the Prevention of Corruption Act, 1988 read with Section 13(2) of the Prevention of Corruption Act, 120-B IPC at Police Station Mataur, District SAS Nagar. On the basis of said criminal case, the petitioner was dismissed from service vide order dated 27.03.2014, however, no departmental inquiry was conducted. He faced trial and ultimately, he was acquitted of the charge by the trial Court vide judgment dated 07.08.2015. He made representation/appeal for re-instatement on his acquittal by the trial Court but it was dismissed.

Learned counsel for the petitioner submits that the Inspector General of Police examined the matter and vide his detailed report dated 29.01.2016, the matter was sent to the Director General of Police, recommending the reinstatement of the petitioner into service but still the appeal was dismissed by observing that the acquittal in the criminal case did not help the petitioner. Learned counsel also submits that the impugned order is totally non-speaking and no reason, whatsoever, has been mentioned. He also submits that the provisions of Article 311 of the Constitution of India have wrongly been invoked while imposing the punishment of removal from service. No reason has been mentioned as to how it was not practicable to hold departmental inquiry. Said provisions are exception to the general rule and for that a specific case was to be made out but no reasoning, whatsoever, has been mentioned. Learned counsel also

submits that the impugned order has been passed in violation of principles of natural justice and the past good service record of the petitioner has not been taken into consideration while passing the impugned order of dismissal from service.

Learned counsel for the petitioner has also relied upon the judgments of this Court in cases ***Dinesh Singh vs State of Punjab and others (CWP No.15903 of 2014)*** decided on **30.08.2016**, ***Warder Ram Singh vs State of Punjab and others (CWP No.3547 of 2015)*** decided on **22.08.2016**, ***Ranbir Singh vs State of Haryana and others (Letters Patent Appeal No.222 of 2015 in CWP No.4490 of 2013)*** decided on **24.05.2016** and ***Kulwant Singh vs State of Punjab and others (CWP No.11315 of 2015)*** decided on **03.11.2015**, in support of his arguments.

Learned counsel for the State while opposing the submissions made by learned counsel for the petitioner submits that while passing the order of dismissal, the competent authority had given categorical finding that there was no possibility to hold inquiry as the concerned witnesses including his wife, close associate N.K. Goel and his gunman were not likely to depose against him. Learned counsel also submits that the petitioner was acquitted by giving the benefit of doubt by the trial Court and he was not acquitted honourably. Even the appeal filed against the order of dismissal was rejected by passing a speaking order.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file including the impugned orders.

The facts relating to appointment, posting and promotions on various posts are not disputed. It is also not disputed that the work and

conduct of the petitioner was found satisfactory as he was issued many commendation certificates but by attracting provisions of Article 311(2)(b) of the Constitution of India, he has been dismissed from service. Said provision is reproduced as under :-

“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 during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.:

(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 the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

On perusal of impugned order of dismissal from service, it is apparent that no reason, whatsoever, has been mentioned to show as to how the provisions of Article 311(2)(b) have been attracted. Without recording the reasons, said provisions cannot be attracted. Simply, it has been mentioned that the witnesses to the occurrence were not likely to depose against the petitioner being wife, gunman and other official. It is also not disputed that no witness was examined as no order for conducting departmental inquiry was passed. The extraordinary powers provided under Article 311(2)(b) have been invoked but the essential requirements of the Article qua the recording of reasons for invoking said provisions have not been complied with, whereas, the reasons are necessary to be recorded to hold as to how it was not practicable to conduct an inquiry or how it was not convenient to the respondent-authority or for the inquiry officer to conduct an inquiry. Said provisions are attracted under the extraordinary circumstances and in absence of extraordinary circumstances, it can be termed as misuse of power and as such, the action of the respondents is not sustainable in the eyes of law.

It was held in **Jaswant Singh vs State of Punjab and others 1991(1) SCT 125** that there must be a subjective satisfaction of the Punishing Authority supported by independent reasons/material. Threats, if any, on the part of the delinquent do not correlate to the cause. Order dispensing with the holding of enquiry was found to be illegal and same was quashed. By relying upon the judgment of the Hon'ble Apex Court in case

Divisional Personnel Officer Southern Railway vs. T.R. Challappan, (1976) 1 SCR 783, it was held that there must exist a situation which renders holding of an enquiry “not reasonably practicable”.

The disciplinary authority must record the reasons in writing in support of its satisfaction. It was also held that the question of practicability would depend upon the existing fact, situation and also surrounding circumstances but the question of reasonable practicability must be adjudged in the light of the circumstances prevailing at the date of passing of the order. In **Union of India Vs. Tulsiram Patel** 1985 (3) SCC 398, it was held that the disciplinary authority is not expected to dispense with the conduct of regular inquiry rightly or arbitrarily or out of an ulterior motive or merely in order to avoid the holding of an enquiry or because of the fact that the department case against the Government servant is weak and it must fail. Same view was taken by this Court in **Smt. Surinder Kaur, Wd/o Sh. Labh Singh vs. State of Punjab through DGP, Chandigarh**, 2008 (1) SCT 396. In **Ex. Constable Balwinder Singh vs. State of Punjab and others**, 2003 (2) SCT 137, the petitioner was dismissed from service after dispensing with the holding of regular departmental enquiry as no regular departmental enquiry was possible. Appeal filed by the petitioner was accepted and departmental enquiry was ordered against him. It was held in said judgment that there was no reason as to why the holding of regular enquiry was dispensed with by invoking Article 311 (2)(b) of Constitution of India. The writ petition was allowed and impugned order of dismissal was set aside. It was held by the Hon'ble Apex Court in the case of **Sudesh Kumar Vs. State of Haryana** 2005 (11) SCC 525 that an enquiry under Article 311(2)(b) is a rule and dispensing with the enquiry is

an exception. The authority dispensing with the enquiry under Article 311 (2)(b) must satisfy by recording reasons as to why it is not reasonably practicable to hold an enquiry. In that case, the order of dismissal was set aside. The relevant portion of judgment in the above said case is reproduced as under:-

“11. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311 (2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order is that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23rd December, 1999, the Visa of the complainant was extended upto 22nd December, 2001. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry.

12. A reasonable opportunity of hearing enshrined in Article 311(2)(b) of the Constitution of India would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of

Article 311 (2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.”

In the written statement, a ground has been taken by the respondent-State that it was not a case of honourable acquittal and the benefit of doubt was given. It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that there is no difference between honourable acquittal and the acquittal by giving benefit of doubt.

It was held by Hon'ble the Apex Court in ***Joginder Singh vs Union Territory of Chandigarh and others* 2015(1) SCT 87** and of this Court in ***CWP No.3532 of 2013*** titled as ***Union Territory, Chandigarh and others vs Pardeep Kumar and others***, decided on **24.02.2016** that once the acquittal was there even by giving benefit of doubt, the appellant cannot be debarred from entry into government service as there was no difference between honourable acquittal and acquittal by granting benefit of doubt.

Same view was taken in another judgment of Hon'ble the Apex Court in ***Deputy Inspector General of Police and another vs S. Samuthiram* 2013(1) SCT 115**. It was held that the expression “honourable acquittal” and “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It was also held that it is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

The observations made by this Court in ***CWP No.11315 of***

2015 titled as *Kulwant Singh vs State of Punjab and others*, decided on 03.11.2015 are as under :-

“ Though a lot of latitude is available to the disciplinary authority to take recourse to Article 311 (2)(b) of the Constitution but visiting the petitioner with the severest and most drastic action which can be visited upon a person in the dock, the inquiry appears necessary to unravel the truth and truth must triumph. The law on the subject is well traversed and the Supreme Court ruling in **Union of India v. Tulsiram Patel**; AIR 1985 SC 1416 : (1985) 3 SCC 398 is the operating law. Applying the principles therein, it cannot be said that it was not reasonably practicable to hold an inquiry. To confront the petitioner with the report of the SP [Detective] I am inclined to think was the minimum guarantee to achieve the acceptable levels of fairness-in-action and to abide by the rule of *audi alteram partem* and the cherished principles of natural justice which ensure that no man should be condemned unheard. Article 311 (2)(b) of the Constitution is not designed to be lightly used and the government employees are not canon fodder.”

In the present case, no reason, whatsoever, or finding have been recorded by the Punishing Authority as to how it was not practicably possible to hold an inquiry. Simply stating that the witnesses are not likely to depose against the petitioner, is not sufficient to hold that the inquiry was not necessary to be conducted. It is not a case in the impugned order that the witnesses were called and they did not come present or did not dare to depose against the petitioner.

Accordingly, the present petition is allowed and the impugned order of dismissal dated 27.03.2014 (Annexure P-1) and order dated

11.04.2016 (Annexure P-5) passed in appeal are hereby quashed.

However, the respondents are at liberty, if so desire, to hold regular inquiry against the petitioner by affording him the reasonable opportunity of hearing and thereafter to pass afresh order as may deem fit and proper in accordance with law.

The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

13.12.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes