

C.W.P No. 15903 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 15903 of 2014

DATE OF DECISION: 30.08.2016

Dinesh Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. DS Patwalia, Senior Advocate with
Mr. Sehajbir Singh, Advocate
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing order of termination dated 20.7.2014 (Annexure P-12) being violative of Article 311 (2) (b) of the Constitution of India. A further prayer has also been made for quashing of suspension order dated 23.5.2014 (Annexure P-9) as well as chargesheet dated 26.5.2014 (Annexure P-10). It is also prayed that a direction be issued to the respondents to reinstate the petitioner and to pay all consequential benefits.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was initially selected as Temporary Assistant Sub Inspector of Police by way of direct recruitment in State of Punjab and was allotted District Ferozepur vide order dated 23.6.1989. Subsequently,

the petitioner was confirmed in the rank of ASI w.e.f. 31.10.1992 and was transferred from Ferozepur Range to Border Range vide order dated 6.2.1996. Thereafter, the petitioner was further promoted to the post of Sub Inspector w.e.f. 18.10.1996 i.e. the date from which his juniors were promoted. The petitioner was also promoted to the post of Insector w.e.f. 1.1.2010 and further to the rank of Deputy Superintendent of Police vide order dated 24.7.2013. Thereafter, vide order dated 23.5.2014, the petitioner was placed under suspension and order of regular inquiry was passed. The petitioner was also issued chargesheet dated 26.5.2014. During regular enquiry, three witnesses were examined but without dispensing with the regular inquiry, the impugned order of termination was passed on 20.7.2014, which is also subject matter of challenge in the present petition.

Learned senior counsel for the petitioner contends that the petitioner participated in the inquiry and remained present as and when he was summoned. Out of total four witnesses, three witnesses were examined but still impugned order of termination has been passed by dispensing with the regular inquiry, which is in contravention of Article 311 (2) (b) of the Constitution of India. Learned senior counsel further submits that it is a settled proposition of law that for dispensing with the inquiry, reasons are necessary to be recorded. Simply by stating that it is not reasonably practicable to conduct inquiry, especially when inquiry has already been initiated, does not fulfill the legal sanctity of Article 311 (2) (b) of the Constitution of India. Learned senior counsel also submits that work of the petitioner had always been appreciated by the respondent-authority and nothing was against him. The impugned order has been passed in violation of principles of natural justice. The past good service record of the

petitioner has not been considered while passing the impugned order of termination as he has served the respondent-Department for more than 25 years and has been promoted upto the rank of Deputy Superintendent of Police. Even many commendation certificates were issued to the petitioner by considering his good work. Learned senior counsel for the petitioner has also relied upon the judgments of Hon'ble the Apex Court in the case of **Jaswant Singh Vs. State of Punjab and others** 1991 (1) SCT 125, Ex. **Constable Chhote Lal Vs. Union of India and others** 2000 (10) SCC 196, of this Court in **Gurmit Singh Vs. State of Punjab and others** 2011 (1) SCT 41 and **Subhash Bansal and others Vs. Income Tax Officer, Ward-6, Patiala and others** 2008 (4) SCT 40, in support of his contentions.

Learned counsel for respondent-State opposes the submissions made by learned counsel for the petitioner and submits that the petitioner is habitual consumer of psychotropic drugs (Smack and heroin etc.). The matter was examined and it was found that the petitioner has connivance with well known smugglers and other bad elements, hence, it was not practicable to conduct regular inquiry. As all this brought bad name to the Department, the petitioner was placed under suspension and a chargesheet was issued to him. Regular inquiry was also initiated and by considering the misconduct of the petitioner and by recording being member of disciplined force, finding him intolerable and incorrigible, it was not reasonably practicable to conduct regular inquiry and as such the provisions of Article 311 (2) (b) were attracted along with Rule 16.1 of Punjab Police Rules read with Section 7 of Police Act, 1861 and accordingly, the order of termination was passed.

Heard the arguments advanced by learned counsel for the

parties and have also gone through the impugned orders and other documents available on the file.

The facts regarding appointment, posting and promotion of the petitioner 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. Issuance of chargesheet as well as appointment of inquiry officer is also not in dispute. Even out of total four witnesses, three witnesses have been examined. Subsequently, the regular inquiry was dropped by attracting provisions of Article 311 (2) (b) of the Constitution of India, which are 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 may be imposed on the basis of the evidence adduced

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 termination, it is apparent that no reasons whatsoever have been recorded to show as to how the provisions of Article 311 (2) (b) have been attracted. Without recording the reasons, the provisions of Article 311 (2) (b) of the Constitution of India cannot be attracted. Simply it has been mentioned that the petitioner is a consumer of psychotropic substance but neither any medical record is there to show that

he consumed any psychotropic substance nor any case is registered against him. It is also not disputed that order of regular inquiry was passed and out of total four witnesses, three witnesses deposed but subsequently during pendency of the regular inquiry, the proceedings have been dispensed with by attracting provisions of Article 311 (2) (b). 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. Simply stating that the petitioner has consumed psychotropic substance is not sufficient. It is a well settled proposition of law that due reasons are necessary to be required to be recorded as to why it was not practicably possible to conduct an inquiry or how it was not convenient to the respondent-authority or the inquiry officer to conduct an inquiry. Said provisions are attracted by exercising extraordinary powers under the extraordinary circumstances. The absence of extraordinary circumstances while invoking provisions of Article 311 (2) (b) 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's case (supra)** 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

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 view of facts and law position as discussed above, the present petition deserves to be allowed. Accordingly, the petition is allowed and impugned order of termination dated 20.7.2014 (Annexure P-12) is quashed. However, the respondents are at liberty, if so advised, to hold a regular inquiry against the petitioner by affording him a reasonable opportunity of hearing and thereafter to pass fresh order in accordance with law.

August 30, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes