

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

**1. CWP No.1947 of 2015
Date of decision: 23.11.2016**

Hardeep Singh and another ..Petitioners

Versus

State of Punjab and others ..Respondents

2. CWP No.19471 of 2015

Lakhwinder Singh ..Petitioner

Versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Dilpreet S. Gandhi, Advocate
for the petitioners.

Mr. Avinit Avasthi, AAG, Punjab
for the respondents -State.

Daya Chaudhary, J.

By this judgment of mine two cases bearing CWP Nos.1947 and 19471 of 2015 shall be disposed of as common questions of law and facts involved are the same. However, for the sake of brevity, the facts are being extracted from CWP No.1947 of 2015.

The prayer made in the present writ petition is for issuance of a writ in the nature of mandamus directing respondents No.2 to 4 to reappoint

the petitioners after setting aside order of dismissal (Annexure P-5) dated 25.01.2013, Annexure P-8 dated 16.08.2013 and Annexure P-9 dated 14.10.2014 as no opportunity of hearing was given to them.

Briefly, the facts of the case as made out in the present writ petition are that the petitioners along with other colleagues namely, PSC Lakhwinder Singh, PHC Dalbir Singh and PHC Amrik Singh, were taking Jassa Singh @ Ganja, Lakha Singh and Buta Singh, who were accused in case No.55 dated 10.07.2011, registered under Section 382 of Indian Penal Code, Police Station Haryana, District Hoshiarpur, to the Court of Judicial Magistrate Ist Class for hearing on 17.01.2013. There was a traffic jam near Jandiala Town and petitioner No.1 got out of the car to see the reason for the traffic jam whereas two constables were sitting in the truck with the three accused persons. Said three accused with the common intention pushed the petitioners and escaped from Police van by hiding themselves in the crowd along with the handcuffs. Resultantly, all were dismissed from service vide order dated 25.01.2013 (Annexure P-5) under Article 311(2) of Constitution of India. FIR No.17 was also registered against the petitioners and other colleagues. All filed appeal against orders of dismissal, PHC Dalbir Singh and PHC Amrik Singh were reinstated by the DIG Border Range.

The petitioners have challenged the orders of dismissal by raising various grounds.

Learned counsel for the petitioners submits that the reasons are required to be mentioned as per provisions of Article 311(2) of Constitution of India. It was a major punishment and the same has been passed without

affording any opportunity of hearing to the petitioners. Learned counsel further submits that the impugned orders of dismissal are also against the provisions of Rule 16.2(1) of the Punjab Police Rules. Learned counsel also submits that one Head Constable, namely, Amrik Singh, who was also member of the Police party along with the petitioners, was also dismissed but he was reinstated in service vide order dated 30.05.2013. At the end, learned counsel for the petitioners submits that past conduct and service record of the petitioners have not been taken into consideration while passing the impugned order.

In response to notice of motion, reply has been filed, which is on record.

Learned State counsel opposes the submissions made by learned counsel for the petitioners and submits that the petitioners along with other co-accused were deputed to take accused, namely, Jassa Singh @ Ganja, Lakha Singh and Buta Singh, from Central Jail Amritsar to produce them before the Court of Judicial Magistrate Ist Class. While they were coming back from Hoshiarpur, the vehicle was got stopped and said accused in connivance with the officials, jumped from the vehicle along with handcuffs in presence of petitioners and other Police officials. Accused Jassa Singh @ Ganja and Lakha Singh succeeded in running away from the Police custody whereas accused Buta Singh was caught by Driver Amrik Singh. FIR No.17 dated 17.01.2013 was also registered against the petitioners and other Police officials and other accused. Learned State counsel further submits that the accused escaped with the connivance of the Police officials including the petitioners, who were the only witnesses of the

scene of crime and they would not have given any statement against the petitioners and as such initiating a regular departmental inquiry against these officials was wastage of time. Learned State counsel also submits that the image of Police force was defamed by the officials and they were dismissed from service without conducting any inquiry by attracting provisions of Article 311(2) of the Constitution of India read with Rule 21.12 of the Punjab Police Rules. Appeal, revision petition as well as the mercy petition filed by the petitioners were considered and rejected by the Deputy Inspector General of Police, Border Range, Amritsar, Inspector General of Police, Border Zone, Amritsar and Director General of Police, Punjab, Chandigarh vide orders dated 25.04.2013, 16.08.2013, 10.10.2014 and 25.04.2013, 10.10.2014 and 17.10.2014, respectively.

Heard arguments of learned counsel for the petitioners as well as learned State counsel and have also perused the impugned orders of dismissal as well as other documents available on the file including the orders passed in appeal and the revision petition.

The facts with regard to taking the accused by the petitioners, order of their dismissal from service as well as the orders passed in appeal and the revision petition are not disputed.

Admittedly, the order of dismissal was passed while attracting the provisions of Article 311(2) of the Constitution of India. In the impugned order, it has been mentioned that the competent authority was satisfied that the accused have escaped in connivance with Police officials. The accused were the only witness of the scene of occurrence and it was not possible for them to make any statement because of their connivance.

The issue in the present petition is as to whether there were reasons for dispensing with the inquiry by attracting the provisions of Article 311 (2) (b) of the Constitution of India or not. It is not disputed that the petitioners were on duty to take the accused from Central Jail, Amritsar to the Court of Judicial Magistrate Ist Class, Hoshiarpur and while on the way, the accused ran away from the custody of the Police in spite of the fact that they were handcuffed. While dispensing with the inquiry, it has been mentioned that it was not found to conduct regular departmental inquiry as the accused were the only witnesses and they were not going to depose against the petitioners because of connivance.

Article 311 (2) (b) of the Constitution of India is relevant for resolving the controversy in hand and the same 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 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.]”

In the present case, the provisions of Article 311(2)(b) have been attracted only on the ground that the accused have connived with the petitioners and they could not be the witnesses because of connivance. The punishing authority must satisfy himself by recording the reasons to hold that it is not reasonably practicable to hold an inquiry. No reasons whatsoever have been mentioned in the order of dismissal. The purpose of granting reasonable opportunity of hearing to a person is to grant 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. It can only be possible if inquiry is held and the delinquent is informed of the charges levelled against him.

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 vs. State of Punjab, 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 present case, neither any satisfaction nor reasons have been recorded. The punishing authority has simply mentioned that it was not practicable to conduct regular inquiry and nowhere it has been mentioned as to how it was not practicable to conduct inquiry. 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. The impugned order has been passed without recording such reasons and satisfaction of the punishing authority.

In view of facts and law position as discussed above, the present petition deserves to be allowed. Accordingly, the present petition is allowed and impugned order of dismissal dated 25.01.2013 (Annexure P-5) as well as orders dated 16.08.2013 (Annexure P-8) and 14.10.2014 (Annexure P-9) are set-aside. However, the respondents are at liberty, if so advised, to hold a regular inquiry against the petitioners by affording them

reasonable opportunity of hearing and thereafter to pass fresh orders as may be deemed fit and proper, in accordance with law within a period of four months from the date of receipt of certified copy of this order.

23.11.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	✓ Yes/No
Whether Reportable	✓ Yes/No