

C.W.P No. 4812 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 4812 of 2014

DATE OF DECISION: 9.9.2016

Gurcharan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. T.N. Sarup, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing impugned orders dated 16.8.2012 (Annexure P-1), whereby, the petitioner has been dismissed from service by invoking the provisions of Article 311 (2) (b) of the Constitution of India as well as order dated 27.5.2013 (Annexure P-3), vide which, the appeal filed by the petitioner against the order of dismissal has been rejected without considering the submissions made by the petitioner.

Briefly, the facts of the case, as made out in the present petition are that the petitioner was initially appointed as Jail Warder on 2.7.1985. Subsequently, FIR No. 190 dated 4.7.2012 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act")

was registered at Police Station Tripuri, Patiala against the petitioner as he was alleged to be in possession of some contraband powder and one and a half bottle of liquor. The petitioner was arrested in that case and thereafter was released on bail on 16.7.2012. During investigation, statements of witnesses were recorded who deposed against the petitioner and he was dismissed from service vide order dated 16.8.2012 by invoking the provisions of Article 311 (2) (b) of Constitution of India stating therein that it was not necessary to hold inquiry under the circumstances. Aggrieved by aforesaid impugned order dated 16.8.2012, the petitioner filed an appeal but the same was also rejected vide order dated 27.5.2013.

The impugned order of dismissal from service dated 16.8.2012 as well as the order dated 27.5.2013 passed while rejecting the appeal are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that no reasons whatsoever were recorded while dispensing with the inquiry by holding that it was not reasonably practicable to hold regular inquiry. Learned counsel further contends that without conducting any departmental inquiry and only on the basis of alleged recovery of contraband, FIR was registered against the petitioner. The petitioner was released on bail but during pendency of the investigation and the impugned order of dismissal from service was passed. Learned counsel also contends that earlier punishments awarded to the petitioner have wrongly been relied upon while passing impugned order of dismissal, whereas, there was no relevancy of the same. The impugned order has been passed mechanically and without any application of mind. The provisions of Article 311 (2) (b) of the constitution of India can be attracted, in case, it is not reasonably practicable to hold departmental

inquiry but for that reasons are necessary to be recorded. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Jaswant Singh Vs. State of Punjab and others** 1991 (1) SCT 125, **Reena Rani Vs. State of Haryana and others** (2012) 10 Supreme Court Cases 215, **Risal Singh Vs. State of Haryana and others** 2014 (3) SCT 8, of this Court in **Ex. Constable Balwinder Singh Vs. State of Punjab** 1996 (1) S.C.T. 131, **Ex. Asstt. Sub Inspector Narender Singh Vs. State of Punjab** 1995 (4) S.C.T. 830, **Ramesh Chand Vs. State of Punjab and others** 2013 (4) SCT 830, **Constable Harinder Kumar Vs. State of Punjab and another** 2014 (1) S.C.T. 733, **Prem Saran Bansal Vs. State of Punjab and others** 2015 (2) SLR 510 and **Kabal Singh Vs. State of Punjab and others** (C.W.P. No. 19478 of 2014 decided on 22.3.2016), in support of his contentions.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that on 4.7.2012, the petitioner was produced before Superintendent, Central Jail, Patiala for coming late on 3.7.2012. On asking the reason by Superintendent, the petitioner could not give any satisfactory reply. On his personal search, narcotic substance alongwith one and a half bottle of liquor was recovered from him. An intimation was sent to SHO, Police Station, Tripuri vide letter dated 4.7.2012, on the basis of which, FIR under Section 21 of the NDPS Act and 61 of the Punjab Excise Act was registered against the petitioner. The petitioner also remained in judicial custody for more than 48 hours and thereafter was placed under suspension and ultimately was dismissed from service on 16.8.2012. Learned State counsel further submits that the petitioner is not entitled for any concession as serious allegations

are there against him. On earlier occasions also, the petitioner was awarded punishments and even FIR No. 228 dated 11.11.2009 under Section 22 of NDPS Act was also registered against him. Learned State counsel also submits that as earlier also the petitioner was involved in various cases and his service record was also not good, sufficient reasons were there and it was not reasonably practicable to hold inquiry and order of dismissal was passed by attracting provisions of Article 311 (2) (b) of the Constitution of India. Learned State counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Kuldip Singh Vs. State of Punjab and others** 1996 (4) SCT 595, in support of his contentions.

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.

Facts regarding appointment, continuous working of the petitioner, passing of impugned order of dismissal from service and order passed by the appellate authority are not disputed.

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 on the basis of recovery of contraband from the petitioner, FIR was registered against him. While dispensing with the inquiry, it has been mentioned that on earlier occasions also, the petitioner was found to be involved in many cases as serious allegations were levelled against him and punishments were also awarded to him. It is also an issue for consideration before this Court as to whether the previous incidents of misconduct is a ground for dispensing with the inquiry or not.

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 petitioner was involved in the case of NDPS and on earlier occasions also, many punishments were awarded to him. It is not disputed that for earlier illegality/ irregularity or any charge, the petitioner had already been punished as sentence has already been awarded to him. The earlier conduct of the petitioner cannot be a ground for not conducting regular inquiry. The reasons are also necessary to be recorded while attracting provisions of Article 311 (2) (b) of the Constitution of India. **Moreover, mere involvement in a criminal case does not amount to a misconduct until and unless there is a verdict of competent authority of jurisdiction proving guilt of any criminal offence against the delinquent employee.** For the earlier lapse or charge, the petitioner has already been punished. Passing order of dismissal on same ground would amount to awarding of double punishment. It is well

established principle of law that inquiry under Article 311 (2) (b) is a Rule and dispensing with same is an exception. 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'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 “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

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's case (supra)**, 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 dismissal dated 16.8.2012 (Annexure P-1) 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.

9.9. 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes