

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.41 of 2015

Decided on : 01.06.2016

Karam Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.R.K.Arya, Advocate, for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

G.S. Sandhawalia , J. (Oral)

Petitioner challenges the order dated 25.05.2014 (Annexure P1) whereby his services had been dismissed by Senior Superintendent of Police, Batala-respondent No.4, under Article 311(2)(b) of the Constitution of India, by dispensing with the departmental enquiry.

The reasoning which weighed with the said respondent was that the petitioner who was a Head Constable along with a Local Rank ASI, Punjab Singh had let off one Rajbir Singh on two occasions. The said Rajbir Singh had been arrested and 95 grams of heroine and 860 grams of narcotic powder had been recovered and FIR No.73 dated 20.05.2014 under Sections, 21, 22, 61 & 85 of the NDPS Act had been lodged at P.S. City Batala. The Superintendent of Police (Detective) Batala had addressed a communication dated 23.05.2014 (Annexure R1/T) giving this information to respondent No.4 which led to the passing of the said order. Accordingly, by holding that the regular departmental enquiry was not reasonably practical as the said person would not depose against him, the same was dispensed with.

The appeal filed by the petitioner was dismissed vide order dated 05.09.2014 (Annexure P2), which is also subject matter of

consideration. The appellate order records that the petitioner had defamed the department and the reputation had come down and by setting aside the order, it would increase the courage of the smugglers and they would continue with the illegal practice.

Counsel for the petitioner has, accordingly, submitted that the termination of the petitioner's service in a summary manner, has gravely prejudiced him. He had joined the Police Force as Constable in the year 2000 and had been promoted as PHC in the year 2011. It is, accordingly, submitted that the services of the petitioner had been dispensed with by adopting a short-cut method. Reliance has been placed upon the judgment of the Apex Court in **Jaswant Singh Vs. State of Punjab & others 1991 (1) SCC 362** that the same could not be on the outcome of the whim or caprice of the concerned officer.

State Counsel, on the other hand, submit that in the facts and circumstances, the dismissal order was justified. The petitioner had misconducted himself twice and there would be no witness available who would depose in the departmental proceedings against the petitioner. Especially since the said informant himself was an accused in an NDPS matter. Reliance has been placed upon **Lakhbir Singh Vs. State of Punjab & others 2016 (1) SCT 41**. The order dated 25.05.2014 (Annexure P1) reads as under:

“Whereas it has been learnt that case FIR No. 73 dated 20/05/14 u/s 21/22/61/85 NDPS Act, Police Station city Batala was registered against Rajbir Singh s/o Baldev Singh r/o Village Aima, Police Station Sadar Batala and 95 Gms Heroine, 860 Gms Narcotic Powder was recovered from him.

During the interrogation of above Rajbir Singh s/o Baldev Singh, he disclosed that he indulges in the sale of Heroine and LR/ASI Punjab Singh, No. 1771/BTL and PR/HC Karam Singh No. 2192/BTL are conniving with him. About 2/3 months before he was nabbed by police party of Special Staff, Batala, but LR/ASI Punjab Singh No. 1771/BTL and PR/HC Karam Singh No. 2192/BTL let him off without taking any legal action against him. Again he was nabbed by the police party of Special Staff Batala a few days before, but he was let off by these police officials without taking any legal action against him.

These facts have been got verified through Sh. Vipin Choudhary, PPS, Superintendent of Police, Detective, Batala, who submitted his report and has established such a grave misconduct on the part of the above said officials. It is established that LR/ASI Punjab Singh, No.1771/BTL and PR/HC Karam Singh, No. 2192/BTL are conniving with above-said drug smuggler Rajbir Singh s/o Baldev Singh r/o village Aima and they let him off without taking any legal action against him, when he was nabbed by a police party of Special Staff Batala. Reportedly, again he was nabbed by the police party of Special Staff Batala a few days before but he was let off by these police officials without taking any legal action against him. Such a grave misconduct on the part of LR/ASI Punjab Singh, No.1771/BTL and PR/HC Karam Singh, No. 2192/BTL being members of Police force is stigmatic and uncalled for to become police officer.

And whereas, I have applied my mind to the facts of this case and I am fully satisfied that regular department enquiry against them is not reasonably practicable as above named drug smuggler and LR/ASI Punjab Singh, No. 1771/BTL and PR/HC Karam Singh, No.2192/BTL posted at Special Staff Batala shall be undue beneficiaries and it shall also cause unreasonable delay as the drug smuggler is not likely to depose against them. So I dispense with the same as

envisaged in article 311 (2) of the Constitution of India.

Now, therefore, I Harjinder Singh Sandhu, IPS, Senior Superintendent of Police, Batala being competent authority and after application of my mind to the facts of this case in exercise of the powers vested in me by virtue of the provision of Punjab Police Rules 16.1 read with section 7 of the Police Act, 1861 and Article 311 (2) (b) of the Constitution of India, do hereby dismiss LR/ASI Punjab Singh, No. 1771/BTL and PR/HC Karam Singh, No. 2192/BTL posted at Special Staff of this district from service with immediate effect.”

A perusal of the above would go on to show that dispensation of the enquiry was held on the ground that the accused Rajbir Singh would not depose against the petitioner. As noticed above, the Superintendent of Police, Shri Vipin Choudhary, had written to the Senior Superintendent of Police, on the basis of which, the impugned order has been passed. The said communication dated 23.05.2014 (Annexure R1/T) reads as under:

“In reference to FIR No.73 dated 20-05-2014 u/s 21/22/61/85 NDPS, Act Police Station City Batala, on the subject cited above.

In reference to above subject it is requested that in the above said case 95 gm Heroin and 860 gram Intoxicant Powder was recovered from the accused. During questioning the accused Rajbir Singh @ Kaka s/o Baldev Singh caste Jat Resident of village Aima had disclosed that he indulged in the sale of Heroin and LR/ASI Punjab Singh No.171/BTL and PR/HC Karam Singh No.2192/BTL are conniving with him. About 2/3 months before he was nabbed by Police Party of special staff Batala, but LR/ASI Punjab Singh No.1771/BTL and PR/HC Karam Singh No.2192/BTL let him off without taking any legal action against him. Again he was nabbed by the Police party of special staff Batala a few days before, but he was let off by these Police officials without taking any

legal action against him.

Such a grave misconduct on the part of LR/ASI Punjab Singh No./1771/BTL and PR/HC Karam Singh No.2192/BTL being members of Police force is stigmatic and uncalled for to become Police officers.

Report is submitted for further necessary action.”

It is, thus, apparent that respondent No.4 had sufficient material with him to the extent that a Superintendent of Police had written to him, pertaining to the involvement of the petitioner and the delinquent co-employee. It is apparent that on two occasions, the said accused had been let off, allegedly, at the instance of the petitioner. The said fact could have been inquired into by examining the said Superintendent of Police and other officials, who had arrested the said smuggler and it would not be impractical to resort to such a recourse. It could have further been verified whether there were other employees present with the petitioner when the accused person was let off and whether the petitioner was on official duty, at that point of time and whether the accused had been apprehended.

The prescribed procedure having not been followed and a short-cut method has been adopted to get rid of the petitioner, without any justified reasoning, on the ground that it would be against the Government's interest. The appellate order also borders on the same justification that the prestige of the department is to be upheld. The Apex Court in Jaswant Singh's case (supra) has held as under:

“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.”

The reasoning which has been adopted by respondent No.4 is not sustainable as it is not grounded on the material which are of rationally probative value. A mere communication from another officer, as such, has led to the extreme order of dismissal, having been passed without even giving the petitioner an opportunity to represent for his valuable rights and 14 years of service has been wiped out with a stroke of a pen.

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.

In such circumstances, this Court is of the opinion that the methodology adopted by respondent No.4, to dispense with the services of the petitioner, was not justified. The reasoning that it would not be reasonable and practical to hold enquiry, is without any basis. Merely because an accused had allegedly given a statement against the petitioner, would not be sufficient ground to dispense with the enquiry and dismiss the services of a Government employee having 14 years of service on the ground that it is not tenable to hold an enquiry.

The judgment in Lakhbir Singh's case (supra) would not be applicable to the facts of the present case. In the said case, it was noticed that the said Constable had gone to Delhi via Haryana and had communicated with an accused and delivered fake currency and in such circumstances, the order of dismissal from service, in exercise of powers under Article 311 (2) (b) of the Constitution of India, had been upheld. In the present case, no such material has been placed on record, apart from the communication reproduced above, which is also an inter-departmental

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communication.

Accordingly, in view of the above discussion, the present writ petition is allowed, order dated 25.05.2014 (Annexure P1) and 05.09.2014 (Annexure P2) are set aside. The petitioner will be entitled for all consequential benefits. However, it is open to the respondents to hold a departmental enquiry, on the same set of allegations.

(G.S. SANDHAWALIA)
JUDGE

JUNE 1st, 2016
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