

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

CWP No.23776 of 2015

Date of Decision:-16.03.2017.

EHC Ghamandi Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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Present: Mr. R.K. Malik, Senior Advocate with  
Mr. Kuldeep Sheoran, Advocate for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

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**P.B. BAJANTHRI, J. (Oral)**

1.) In the instant writ petition, petitioner has questioned the validity of Annexure P-1, P-3 and P-8 by which he has been dismissed from service by the disciplinary authority while invoking Article 311 (2) (b) of the Constitution. Feeling aggrieved by the order of disciplinary authority, the petitioner has preferred an appeal before the appellate authority. The appellate authority confirmed the order of disciplinary authority. Consequently, the petitioner preferred a revision petition before the revisional authority. The revisional authority has confirmed the order of disciplinary authority as well as appellate authority. Thus, the present petition.

2.) Learned counsel for the petitioner submitted that based on the

preliminary inquiry held by the officials of the Department, the disciplinary authority proceeded to impose the penalty of dismissal from service under Article 311(2)(b) to the extent that impracticability of holding the disciplinary proceedings against the petitioner having regard to the serious allegations made against the petitioner. In this regard, the disciplinary authority has recorded as under-

*“4. After such act of serious misconduct if he is allowed to continue in the Police Force, it would be detrimental to public interest. Besides, it is common experience that intimidating the witnesses so as not to come forward to dispose against the delinquent in a departmental enquiry is a practice adopted by defaulter. It requires great courage to depose against such a desperate person and the task becomes more acute and difficult where the delinquent is a police officer who has no respect for law and moreover he may use his job to influence statements/deposition. Moreover, he is well linked to criminals of the area and he can also utilize them to brow beat the witnesses. Therefore, it is not practicable to hold a regular departmental enquiry. Sh. Dheeraj Setia, Dy. Supdt. Of Police, Bhiwani and Inspr./CIA Jagat Singh have already verified the case and found the involvement of EHC Ghamandi Lal No.869/SRS with smuggler Amar Singh S/o Sohan Lal Bishnoi R/o Kharakheri.”*

3.) Thus, it was pointed out that when the respondents could initiate preliminary inquiry at the same time they could have resorted for regular department inquiry so as to give reasonable and ample opportunity to the petitioner to defend the allegations stated in the dismissal order so also in the preliminary investigation conducted by the official respondents.

Thus, the petitioner has not been provided opportunity of hearing before passing order of dismissal. It was further contended that one Khayali Ram who was similarly situated person in whose case the DGP has taken a lenient view to hold an inquiry. Thus, there is a discrimination among the employees of the Police Department. It was further argued that matter is covered by earlier decision of the Supreme Court passed in **Sudesh Kumar Vs. State of Haryana and others** vide Annexure P-9. In view of these contentions, the impugned orders are liable to be set aside.

4.) Per contra, learned counsel for the respondents vehemently opposed the contention of the petitioner's counsel that there was a preliminary inquiry before passing the order of dismissal. He has disputed that no such preliminary inquiry was conducted in respect of dismissal of the petitioner. On the contrary materials have been taken into consideration while examining a criminal, namely, Amar Singh. During his interrogation certain adverse reports have been received against the petitioner. Such material have been taken into consideration to contend that there is an impracticability to hold regular departmental inquiry against the petitioner. Thus, there is no infirmity in the order of dismissal from service as is evident from para 4 of the order. Further it was contended that the appellate authority as well as revisional authority have confirmed the order of disciplinary authority. Therefore, the petitioner has not made out a case.

5.) Heard learned counsel for the parties.

6.) The petitioner has been dismissed from service without inquiry while invoking Article 311 (2) (b) of the Constitution of India. Article 311 reads as under:-

***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 a 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:*

*Provided further that this clause shall not apply*

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

7.) Article 311 (2)(b) empowers the competent authority to dismiss or remove a person or to reduce him in rank if the authority is satisfied that for some reason, to be recorded by authority in writing, it is not reasonably practicable to hold such inquiry. Admittedly, in the present case, the disciplinary authority has recorded while dismissing the petitioner from service in particularly para 4 cited supra. Perusal of the dismissal order, do not reveal as to whether is it in consonance with Article 311 (2) (b) or not. For the reasons that the authority was empowered to chose any one of the penalty like dismissal or removal or reduction in rank, whereas, in the present case, the disciplinary authority has chosen to impose the penalty of dismissal from service. No reasons have been recorded as to why he has chosen to impose the penalty of dismissal from service when the constitutional provision empowered him to chose anyone of the major penalty. Therefore, it was bounden duty of the disciplinary authority to pass order in consonance with Article 311 (2) (b) to the extent that why he is exercising the power to impose the penalty of dismissal from service and why not removal or reduction in rank. To that extent the disciplinary authority has not recorded any finding so as to comply the above provision. On this ground only the dismissal is liable to be set aside and consequential proceedings of the appellate authority as well as revisional authority are set aside. Reserving liberty to the disciplinary authority to pass appropriate order while exercising power under Article 311 (2) (b) to the extent of imposing particular penalty when statute provides for imposing any one of

the penalty. Such a decision shall be taken by the disciplinary authority within a period of 3 months from today.

8.) Petition stands partly allowed.

9.) At this stage, learned counsel for the petitioner contended that preliminary inquiry was held. In that event they could have resorted for regular inquiry. Such contention is not viable to the petitioner when authority is invoking Article 311 (2) (b) of the Constitution. Thus, the above contention is hereby rejected. Insofar as discrimination between the petitioner and Khayali Ram is concerned, this Court cannot examine in respect of discrimination in imposing the penalty of dismissal from service if it is under Article 311 (2) (b). It all depends on each case as well as factual aspects of the matter. Thus, the petitioner has not made out a case so as to contend that discrimination ground with reference to Khayali Ram's case. Thus, contention of learned counsel for the petitioner that there is discrimination with the petitioner in imposing the penalty of dismissal from service without holding an inquiry is hereby rejected.

**(P.B. BAJANTHRI)**  
**JUDGE**

**March 16, 2017.**

*sandeep sethi*

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.