

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

Date of decision: 17.11.2018

CWP No.14082 of 2013 (O&M)

Raj Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CWP No.23134 of 2017

Daya Nand

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Radhika Suri, Senior Advocate, with
 Mr. M.S.Kanda, Advocate, for the petitioner
 in CWP No.14082 of 2013.

Mr. S.K.Garg Narwana, Senior Advocate, with
 Mr. Vishal Garg Narwana and Mr. Nitin Sachdeva, Advocates,
 for the petitioner in CWP No.23134 of 2017.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the above the mentioned two writ petitions, as common questions of law and facts are involved in them, which can conveniently be decided by a common order.

2. Both the petitioners have filed separate writ petitions challenging the order dated 01.06.2013 passed by the Commissioner of Police, Faridabad, whereby they were dismissed from service with immediate effect under Rule 311(2)(b) of the Constitution of India. Daya Nand [petitioner in CWP No.23134 of 2017] also challenged the order dated 30.01.2015 passed by the Director General of Police, Haryana, dismissing his appeal.

3. A few relevant facts may be noticed. While trying to trace a murder case bearing FIR No.143 dated 10.03.2013 registered under Section 302/201 IPC at P.S.Saran, Police Commissioner at Faridabad, an intelligence input was received that if mobiles No.9717735608 and 9717338922 are tracked/followed, then the police party may get some clue in this untraced case. Pursuant thereto, Cyber Cell was asked to monitor the interceptions and report to the Investigating Officer. Cyber Cell during investigation found that these two numbers are actually used by one person, namely, Narender @ Matru, who is a known Satta player in Faridabad and is a bad character in the record of police Station Kotwali. Cyber Cell upon noticing that many police officials are on line with these numbers, submitted its detailed report with call details and a CD of recorded conversations. After going through the material on record, the Commissioner of Police, Faridabad vide impugned order dated 01.06.2013 dismissed the petitioners in both the cases forming opinion that it was not reasonably practicable to hold a regular departmental enquiry and that if the delinquent police personnel are allowed to continue in the force after this act of serious misconduct, it would be detrimental to public interest. The reasons given by the Commissioner of

Police, Faridabad for not holding a regular departmental enquiry are as follows:

- “(i) It would be highly prejudicial to the general interest and discipline of the police force;
- (ii) There are direct technical evidences against these Police personnel which prove their mix-up with known criminals. The guilt of the delinquents is well proved by way of technical evidence comprising of report of Cyber Cell, transcript of conversation and is not required to be proved by any witness. If such personnel are given more time to serve they would cause irreparable loss to the Department and tarnish the image in public. The said Police personnel have become a liability to the Department and should be dismissed. It would be both in public interest as well as for the establishment of rule of law, which is expected by public at large.”

4. Before this Court, Ms. Radhika Suri, Senior Advocate, assisted by Mr. M.S.Kanda, Advocate, appearing on behalf of the petitioner in CWP No.14082 of 2013 and Mr. S.K.Garg Narwana, Senior Advocate, assisted by Mr. Vishal Garg Narwana and Mr. Nitin Sachdeva, Advocates, appearing on behalf of the petitioner in CWP No.23134 of 2017 have argued that the impugned order dismissing both the petitioners from service dispensing with regular departmental enquiry is in gross violation of law, whereas similarly situated officials, namely, SI Abhey Singh, SI Virinder Singh and ASI Hari Singh have been given the benefit of facing departmental inquiry and have thereafter been completely exonerated holding that the charges raised against them are not proved. Learned senior counsel argued that no reasons, much less sufficient reasons, have been disclosed in the impugned order as to why the authority was satisfied that it is not reasonably practicable to hold an

inquiry. They further argued that dismissal from service is a major punishment of the extreme kind and the same has been passed without affording any opportunity of hearing to the petitioners to put forth their case. They further argued that though the basis of punishment is a CD and the transcript of conversations, but no voice sample has been taken of the petitioners. Despite the presence of such material, enquiry should have been conducted to enable the petitioners to prove their innocence in disciplinary proceedings, in case they were instituted. Therefore, the order passed by the Commissioner of Police, Faridabad deserves to be set aside. Reliance is placed on numerous judgments of the Supreme Court as well as of this Court.

5. On the other hand, Mr. Shruti Jain Goyal, learned DAG, Haryana, submitted that regard being had to the nature of allegations, the Commissioner of Police, Faridabad who is the competent authority, thought it appropriate to dispense with the inquiry and hence, the order of dismissal cannot be flawed.

6. It is well settled that an inquiry under Article 311(2) is the rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry must satisfy itself for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the impugned order 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 impugned order to hold that it may not be reasonably practicable to bring an inquiry are: *(i) It would be highly prejudicial to the general interest and discipline of the police force; and, (ii) There are direct*

technical evidences against these Police personnel which prove their mix-up with known criminal. The guilt of the delinquents is well proved by way of technical evidence comprising of report of Cyber Cell, transcript of conversation and is not required to be proved by any witness. However, these are no ground for dispensing with the inquiry. There was no difficulty in securing the voice samples of the delinquents. Telephonic conversation with a person having bad character in the record of Police does not amount to a misconduct until and unless there is a verdict of competent authority of jurisdiction proving guilty of any criminal offence. Had any voice samples been taken and the delinquents resisted to give samples, only in such eventuality it could be held that it was not reasonably practicable to hold inquiry. Moreover, in the inquiry proceedings initiated against three Police Officials, namely, SI Abhey Singh, SI Virinder Singh and ASI Hari Singh on the basis of same CD and identical allegations, it was concluded by the Enquiry Officer that mobiles No.9717735608 and 9717338922 were in the name of one Dhiraj Grover son of Darshan Kumar and Narender K. Dass of Safdar Jang Motors and that there was no proof evidence that they were being used by Narender @ Matru. It was also held that no case of betting has been found against Matru registered in any of the Police Stations. Resultantly, all of them were proved to be innocent.

7. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution of India would include an opportunity to defend themselves and establish their innocence by examining the defence witnesses and by cross-examining the prosecution witnesses produced against them. This exercise they can be done only if inquiry is held where they have been informed of the charges leveled against them. In the present

case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of hearing.

8. I had occasion to deal with such a situation where extreme and excessive action was taken against the officials after conducting a preliminary enquiry in which confessional statements were recorded and then for punishing authority to have taken recourse to Article 311(2)(b) of the Constitution in Kabal Singh Vs. State of Punjab & others, 2016 (2) SCT 705. In *Kabal Singh's* case, while referring to the judgments of the Supreme Court in Union of India & another Vs. Tulsiram Patel & others, AIR 1985 SC 1416; Indian Railway Construction Company Limited Vs. Ajay Kumar, 2003 (2) SCT 291 and Jaswant Singh Vs. State of Punjab & others, 1991 (1) SCT 125, I held the action taken under Article 311(2)(b) of the Constitution as wholly excessive, oppressive, unreasonable, unfair, unconstitutional and falling far short of the standards required and expected in exercise of powers to dismiss an employee from service under the constitutional provision.

9. Thus, I am of the considered view that the decision taken was perverse and irrational. The material available with the Commissioner of Police was tangible material, which could easily have been tested in a regular disciplinary proceeding by confronting the petitioners with that material and permitting cross examination, so that the truth was revealed about the involvement and guilt could be punished on preponderance of probabilities. The petitioners have been condemned unheard and for the wrong reasons. The cardinal rule to be guided is that truth must triumph at any cost. Mere suspicion is not the bedrock of Article 311 (2) (b) of our Constitution.

10. In view of the above discussion, both the petitions are allowed. The order of dismissal impugned in both the petitions dated 01.06.2013 as well as order 30.01.2015 passed in appeal in the case of Daya Nand [petitioner in CWP No.23134 of 2017] are set aside. The petitioners would be reinstated into service. However, the respondents are at liberty, if so advised, to hold regular departmental enquiry against the petitioners on the basis of material available with them while keeping in mind the provisions of Section 65-B of the Evidence Act, 1872. The monetary benefits which may accrue will depend on the outcome of the disciplinary proceedings, if initiated. In the event, the petitioners are found innocent in the contemplated enquiry, if any instituted, and then needless to say they would be entitled to all consequential benefits. If an enquiry is held it should be concluded within six months, if not earlier.

17.11.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>