

CWP-12161-2019 (O&M) AND THREE CONNECTED WRIT PETITIONS :{ 1 }:

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

212

(PROCEEDINGS THROUGH V.C.)

DATE OF DECISION: SEPTEMBER 17, 2020

(1) CM-4382-CWP-2020 & CWP-12161-2019

Rajan Kapur Vs. State of Punjab

(2) CWP-22914-2019

Vikas Sharma Vs. State of Punjab

(3) CM-7784-CWP-2020 & CWP-32445-2019

Pargan Singh Vs. State of Punjab

(4) CM-5594-CWP-2020 & CWP-35283-2019

Sukhjinder Singh Vs. State of Punjab

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Akshay Bhan, Sr.Advocate with
Mr. A. S. Talwar, Advocate,
for the petitioner. (in CWP No.12161 of 2019).

Mr. Pankaj Jain, Advocate,
for the petitioner. (in CWP No.22914 of 2019).

Mr. Parminder Singh, Advocate,
for the petitioner. (in CWP No.32445 of 2019).

Mr. Mayank Mathur & Mr. Jagtar Singh Sidhu, Advocates,
for the petitioner. (in CWP No.35283 of 2019).

Ms. Anu Chatrath, Sr.Addl.Advocate General, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide abovesaid four writ petitions, which
arise out of a common order dated 25.04.2019, whereby the petitioners

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have been dismissed from Government service while exercising the powers conferred under Article 311 (2)(b) of the Constitution of India read with Rule 13(ii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as “the 1970 Rules”) by dispensing with holding of a regular enquiry.

2. All these petitioners were employees of Jail Department, Punjab and were posted at Central Jail, Patiala. Additional Director General of Police (Prisons) sent a source report to the Minister Incharge of the Department of Jails regarding the activities of the petitioners deputed at Central Jail, Patiala, alleging that gangster Gourav Sharma @ Goru Bacha confined in Central Jail, Patiala, in connivance with Jail Superintendent, Rajan Kapur and with the help of other convicts i.e. Amit Bhura, Bholu Havelia etc. had switched off the cameras of the jail barracks and thrashed convict Brajesh Thakur for about three days. An obscene video of Brajesh Thakur had been made and recorded and they forced him to give Rs.15 lacs in cash, which was received by Goru Bacha through his co-convict Raman, resident of Mohali. They were also promised one flat in Patna and 15-20 acres of land on Muzaffarpur Bihar Nepal Road. Out of these Rs.15 lacs, Rs.6 lacs were given to Superintendent Rajan Kapur. Allegations were also made in the source report that through Goru Bacha, the Superintendent has also extorted huge amounts from Makhan Singh, a builder of Mohali, Baljinder Paster and travel agent Jimmy for providing various facilities in jail to other convicts.

3. Enquiry was handed over to Inspector General of Police, Counter Intelligence, Punjab. He conducted an enquiry into the allegations levelled against the petitioners and other officials, where statements of

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victims of extortion, torture and unnatural sex were recorded by the Enquiry Officer. In the report, it was concluded by the Enquiry Officer that Rajan Kapur (petitioner in Civil Writ Petition No.12161 of 2019) was patronizing a well organized extortion racket in the Central Jail, Patiala with the help of other officials (other petitioners in the connected writ petitions) as also inter-State gangsters lodged inside the Patiala Jail. Because of these unlawful activities of the officers/officials of the Prison Department, they have posed mammoth danger to the security of Nation, especially when Punjab had witnessed a dreaded jail break of maximum security jail, Nabha in the recent past. The Enquiry Officer indicted the petitioners and gave a clear finding of their involvement. During the course of enquiry, the petitioners were also associated and their statements were recorded but they failed to prove their innocence.

4. Referring to the said report, the competent authority, while exercising the powers under Article 311(2)(b) of the Constitution of India, dispensed with holding of the departmental enquiry after recording its satisfaction in the facts and circumstances of the case and the petitioners were dismissed from service. In the impugned order dated 25.04.2019, the competent authority in Para 14 of the said order recorded its satisfaction to the effect that holding an enquiry, as contemplated under Article 311 of the Constitution of India and the 1970 Rules, is not reasonably practicable as it may cause loss of time, which may be prejudicial to public interest and security of the Nation. It was concluded that there has been misconduct of such magnitude on the part of the petitioners that Rajan Kapur, Deputy Superintendent Grade-2, the then Superintendent Central Jail, Patiala, Vikas Sharma, the then Assistant Superintendent Central Jail Patiala, Sukhjinder

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Singh, the then Assistant Superintendent Central Jail, Patiala and Pragan Singh, Head Warder, Central Jail, Patiala deserve the severest penalty permissible by law and proceeded to dismiss them from Government service with effect from 25.04.2019. It is this order, which has been assailed by the petitioners in these four writ petitions.

5. Bereft of the specific details, the issue involved in the present case is: `whether invoking of Article 311 (2)(b) of the Constitution of India read with Rule 13 of the 1970 Rules is justified so as to come to a conclusion that it was not reasonably practicable to conduct an enquiry against the petitioners'?.

6. Facts in these cases are not in dispute and in any case except for few skeletal aspects, which need to be referred to come to a conclusion with regard to the opinion formed by the competent authority while invoking the constitutional provisions of dispensing with the enquiry as contemplated by Article 311 of the Constitution of India are required to be mentioned.

7. Source report from the Additional Director General of Police, Jails, dated 13.12.2018 received from the Jail Minister, Punjab, led to initiation of enquiry by Inspector General of Police, Counter Intelligence. It was followed by an email dated 08.01.2019 received in the office of the Chief Minister, Punjab, from Smt.Manorama Devi wife of Late Radha Mohan Thakur, mother of an undertrial, Brajesh Thakur lodged in Patiala Jail, wherein she alleged that he is being physically tortured and an extortion of Rs.15 lacs has been made from her son by certain gangsters under the guidance and supervision of Rajan Kapur, Superintendent of Central Jail, Patiala. Another mail dated 11.02.2019 was received from the

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office of Chief Minister, Punjab and from the Minister of Home Affairs dated 01.03.2019, which were also forwarded to the Enquiry Officer. Similar mails were received from Karamjot Singh son of Majit Singh in which allegations of extortion and inhuman behaviour being meted out to his brother, Kiranveer Singh @ Jimmi lodged in Patiala Central Jail by gangsters in the said jail under the patronage of Superintendent Central Jail. It was also alleged that they have extorted Rs.7 lacs from him. As regards Brajesh Kumar Thakur, he was the prime accused of Muzzaffarpur shelter home sexual assault case (FIR No.33/2018, Town Police Station, Muzzaffarpur, later on transferred to the CBI), who has been transferred from Bhagalpur Jail on orders of Hon'ble the Supreme Court and lodged in Central Jail, Patiala since 02.11.2018. Statements have been recorded by the Enquiry Officer, who had levelled allegations against the officials/officers alleging them to have indulged in not only beating the jail inmates but also committing unnatural sex with them, apart from extracting money. This is all said to be done under the supervision of Jail Superintendent. Some inmates have also volunteered to give their statements before the Enquiry Officer. It is on the basis of the said enquiry report that the competent authority has proceeded to pass an order invoking the powers under Article 311 (2)(b) of the Constitution of India.

8. Learned Senior counsel, Mr.Akshay Bhan as also other counsel for the petitioners have relied upon the observations of Hon'ble Supreme Court in Union of India Vs. Tulsiram Patel, 1985 (3) SCC398 to attack the impugned order and stated that the same is in violation of the provisions of the Constitution of India and the reasons, which have been recorded in the final order, are not sustainable and are rather referred to for the sake of it,

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which are vague and without any basis. No independent mind has been applied by the competent authority and rather it has towed the line of the Enquiry Officer to come to a conclusion. In this regard the reasons as assigned in the impugned order have also been referred to. The reasoning given is wholly extraneous and based on irrelevant grounds and is not upto the satisfaction as required under the provisions of the Constitution. While referring to the judgment of Hon'ble Supreme Court in the case of Jaswant Singh Vs. State of Punjab and others, (1991) 1 SCC 362, it is asserted that the decision, which has been taken by the competent authority, is solely based on *ipse dixit* of the said authority and it is not supported by or fortified by any independent material to justify dispensing with the enquiry as envisaged under Article 311 (2) of the Constitution of India. The order has been passed merely with an intent to not hold an enquiry and to dispense with it without appreciating the facts and the circumstances with regard to the justifiability of such situation where no enquiry can be held.

9. Mr.Pankaj Jain, Advocate, learned counsel for the petitioner in Civil Writ Petition No.22914 of 2019 while referring to Para 14 of the impugned order submits that the competent authority is itself not sure with regard to reasonability and practicability of not holding an enquiry as firstly the reasons assigned are untenable and secondly the word used by the competent authority is “may”, which shows the doubt in the mind of the competent authority. When the competent authority is itself not sure, how could it come to a conclusion with regard to the satisfaction of not holding an enquiry.

10. Mr.Parminder Singh, Advocate, learned counsel for the petitioner in Civil Writ Petition No.32445 of 2019 has asserted that the

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name of this petitioner, Pargan Singh, has just cropped up during the enquiry at a very belated stage as is apparent from the impugned order. He contends that no specific role has been attributed to said petitioner and it is at the whims and fancies of the Enquiry Officer that the petitioner was named and involved in the enquiry only for the reason he being posted in Central Jail, Patiala. The competent authority without taking into consideration the facts of the case has merely proceeded to and hurriedly dismissed the petitioners from service.

11. Counsel for the petitioners, while referring to the reasons which have been assigned, have contended that “because of loss of time by holding an enquiry” cannot itself be a ground for coming to a conclusion that it could not be reasonably practicable to hold an enquiry as no prejudice would be caused to the public interest. As regards the security of the Nation is concerned, merely because inter-state gangsters are said to be involved and lodged in the Central Jail, Patiala, cannot be a ground to come to such a conclusion when there is no such material on record, which would justify the conclusion of the competent authority with regard to dispensing with the enquiry. On the basis of the above submissions, counsel for the petitioners have assailed the impugned order.

12. A factual assertion, which has been made by learned senior counsel for the petitioners is with reference to the allegation relating to torture and extortion of alleged money from undertrial Brajesh Kumar Thakur. Reference in this regard has been made to the order dated 06.12.2018 passed by Hon’ble Supreme Court in Nivedita Jha Vs. The State of Bihar and others, Special Leave to Appeal No.24978 of 2018. In the said order, a letter dated 06.12.2018 purported to be written by children of

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Brajesh Kumar Thakur was produced by a counsel, where allegations were that he was being tortured physically and mentally in the Central Jail, Patiala. Hon'ble Supreme Court directed production of the said undertrial before the Medical Superintendent, Rajindra Hospital, Paiala at 4.00 p.m. on the same date, where the Chief Judicial Magistrate or any other Judicial Magistrate authorized by him was also directed to be present in hospital at that time. The Medical Superintendent was to constitute a Medical Board to examine Brajesh Kumar Thakur and submit a report in Court on 10.12.2018. In pursuance of the said order, medical report was presented before the Court. On perusal of the same on 10.12.2018, Hon'ble Supreme Court found that there is absolutely no injury caused to Brajesh Kumar Thakur and, therefore, no further orders were passed on the said letter. Referring to these orders, it is asserted that the allegations against the Prison officials/officers, who are petitioners herein, are totally baseless and they have been dismissed from services at the whims and fancies of the competent authority without application of mind.

13. On the other hand, learned counsel for the State has asserted that the competent authority, on the basis of the report, which has been submitted by senior police officer, has proceeded to apply its mind and it is when substance was found therein and there was ample material against the petitioners, a decision was taken by the said authority that it was not reasonably practicable to hold an enquiry as it may cause loss of time, which may be prejudicial to public interest and security of Nation. The decision was based upon the material made available to the competent authority, including the enquiry report. The Constitutional mandate and requirement stand fully complied with and in the given facts and

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circumstances of the present case, the decision of the competent authority is wholly justified, which do not call for any interference by this Court. Counsel has also placed reliance upon the judgment of Hon'ble Supreme Court in Tulsiram Patel's case (supra). Reference has also been made to the judgments of Hon'ble Supreme Court in Chandigarh Administration Vs. Ajay Manchanda, 1996 (3) SCC 753 and Kuldeep Singh Vs. State of Punjab, 1996 (10) SCC 659.

14. I have considered the submissions made by counsel for the parties and with their able assistance have gone through the pleadings and records of the case.

15. The law, as settled by Hon'ble Supreme Court in Tulsiram Patel's case (supra) makes it amply clear that it is the competent authority which has to come to a conclusion with regard to the satisfaction of it being not reasonably practicable to hold an enquiry. "Reasonably practicable" has been explained by the Hon'ble Supreme Court as not to mean impossible but to a fairly sufficient extent. It is not a total or absolute impracticability, which is required by Clause (b) of Article 311(2) but holding of an enquiry, if in the opinion of a reasonable man, is not practicable, then the decision has to prevail. The disciplinary authority is not expected to dispense with the enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry or because the department's case against the Government servant is weak and must fail but it should be based upon an opinion to be formed with an independent mind with regard to reasonable practicability of a disciplinary enquiry. This has to be assessed on the basis of facts and circumstances of each case and the Court must judge them on its own merit.

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It has been held that although the decision of the disciplinary authority has attained finality by Article 311(3) of the Constitution but the same is not binding upon the Court so far as its power of judicial review is concerned and when the said order is found to be lacking in the aspects and requirements of the constitutional provisions, the Court will strike down the order dispensing with the enquiry as also the order imposing penalty. If the Court finds that the reasons are irrelevant or are abuse of powers conferred upon the disciplinary authority or the same is coloured in malafies, the same would take the case out of purview of Clause (b) of Article 311(2) of the Constitution of India, making the order liable to be set-aside. A word of caution has also been sounded by Hon'ble Supreme Court by observing that the Court will not sit as a Court of first appeal over the judgment of disciplinary authority but must put itself in the place of disciplinary authority and consider what in the then prevailing situation, a reasonable man, acting in a reasonable way, would have done. Where two views are possible, the Court will decline to interfere.

16. With these principles in mind, the impugned order dated 25.04.2019 requires to be now analysed.

17. A perusal of the said impugned order would show that the competent authority has only reproduced the enquiry report submitted by the Enquiry Officer. It has not applied its independent mind to the facts and circumstances of the case. This is apparent from the fact that the competent authority has even not mentioned or observed what to say conclude that it agrees with the decision of the Enquiry Officer. After reproducing the enquiry report in the impugned order, in Para 14, it has recorded its satisfaction in the following terms:-

“In these circumstances, the competent authority is satisfied that holding an inquiry as contemplated by Article 311 of the Constitution of India and the Punjab Civil Services (Punishment and Appeal) Rules, 1970 is not reasonably practicable as it may cause loss of time, which may be prejudiced to public interest and security of the Nation. There has been misconduct of such a magnitude by Sh.Rajan Kapoor, Deputy Superintendent Grade-2 the then Superintendent Central Jail, Patiala, Sh.Vikas Sharma, the then Assistant Superintendent Central Jail, Patiala, Sh.Sukhjinder Singh, the then Assistant Superintendent Central Jail, Patiala and Sh.Pragan Singh Head Warder Central Jail, Patiala, that the severest penalty permissible by law is called for.”

18. On analysing the said paragraph within the parameters as have been culled out above, this Court is of the considered opinion that the satisfaction, as recorded, does not fulfil the constitutional mandate as there is no independent application of mind by the competent authority. As has been observed above, the competent authority has not agreed with the enquiry report but had simply proceeded to observe that it is satisfied that the holding of an enquiry is not reasonably practicable. The reasons, which have been given therein, are reproduced herein below:-

*“.....as it **may** cause loss of time, which **may** be prejudiced to public interest and security of the Nation.”*

19. The use of word ‘may’ in these reasons leaves a void in itself with regard to satisfaction of the competent authority as the said authority is itself not sure with regard to the reasons to be of such effect, which would

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prejudice the public interest and the security of Nation. The further language used therein is mere reference to the constitutional provisions with an intent to fulfil the requirement of law. The order and the reasons as recorded are merely in order to avoid holding of an enquiry. The competent authority was neither expected nor required to dispense with enquiry lightly or arbitrarily but was required to take into consideration the facts and circumstances of the case and apply its independent mind based upon any independent material to justify the dispensing with the enquiry as envisaged under Article 311(2) of the Constitution of India, which, in the considered view of this Court is missing because of which the impugned order cannot sustain.

It may be added here that the Court has intentionally not gone into the merits of the case on facts but has only tested the impugned order dated 25.04.2019 within the realm of Article 311(2) of the Constitution of India for the reason that the competent authority may ultimately, if it so decides, proceed to hold a departmental enquiry against the petitioners.

20. In view of the above, the writ petitions stand allowed and the impugned order dated 25.04.2019 is hereby quashed. Liberty, however, is granted to the respondents to proceed against the petitioners in accordance with law.

21. As the main writ petitions stand allowed, all the pending applications stand disposed of as infructuous.

September 17, 2020
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No