

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

**CWP No. 17929 of 2008(O&M)
Date of Decision:13.01.2020**

Shish Ram

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Dr. Sushil Gautam, Advocate assisted by
Sh. A.S. Ahluwalia, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

TEJINDER SINGH DHINDSA J.(Oral)

Petitioner who was serving on the post of Constable under the Punjab Police has filed the instant petition assailing his order of dismissal dated 12.05.2006 (Annexure P-2). Further challenge is to the order dated 27.03.2008 (Annexure P-3) whereby the appeal preferred against the major penalty of dismissal from service also stands rejected.

Counsel for the parties have been heard at length and pleadings on record have been perused.

Apparently, petitioner was involved in FIR No.26 dated 22.02.2006 under Section 18 of the NDPS Act registered at Police Station North, Chandigarh and alleged recovery of 1 Kg. 400 Gms. Opium, is stated to have been made from him.

The order of dismissal dated 12.05.2006 (Annexure P-2) has been passed by the commandant, 13th Battalion, PAP Chandigarh, invoking Article 311 (2) (b) of the constitution of India thereby dispensing with requirement of a departmental enquiry. In the impugned order itself

the basis of dispensing with the departmental enquiry has been disclosed i.e. ***“being in police department he can pressurize the witnesses and nobody is likely to come forward to give evidence against him.”*** The impugned order of dismissal stands affirmed vide order dated 27.03.2008 passed by the Director General of Police, Punjab (Annexure P-3). Such order is also under challenge in the instant petition.

The issue as to whether a police official can be dismissed from service without holding an enquiry and Article 311 (2) (b) of the Constitution being invoked on the ground that such police official could have influenced witnesses, is no longer *res integra*.

The Hon'ble Supreme Court of India in ***(2000) 10 SCC, 196 Ex. Constable Chhote Lal Vs. Union of India and others*** was examining an order of dismissal of the appellant therein and who was serving on the post of Constable and who had been dismissed from service without holding any enquiry and exercising powers under Article 311 (2) (b) of the Constitution of India and such course of action having been justified by the employer on the plea that since the appellant himself was a police constable he could have influenced the witnesses who would have come forth in the departmental enquiry and accordingly the enquiry was not held. The Hon'ble Apex Court held such basis of dispensing with the enquiry to be not valid and accordingly set aside the order of dismissal, directed reinstatement without back wages and granted liberty to the concerned authorities to hold a departmental enquiry, if so desired.

Keeping in view the dictum laid down in the case of **Ex-Constable Chhote Lal (supra)** the imposition of major penalty upon the petitioner without holding a departmental enquiry cannot sustain.

There is yet another aspect which requires notice. In the trial that ensued upon registration of FIR No.26 dated 22.02.2006, the petitioner has earned acquittal. Judgement of acquittal passed by the Trial Court dated 20.05.2009, stands appended and placed on record as Annexure R-1 alongwith the replication filed on behalf of petitioner to the written statement filed on behalf of the State. Counsel has also invited the attention of this Court to the memo dated 17.09.2009 at Annexure R-2 issued by the Central Public Information Officer, Office of District Attorney, District Courts, UT Sector 17, Chandigarh, in pursuance to an application having been filed under the Right to Information Act and which clearly reveals that no appeal has been filed before this court against the judgement of acquittal. In other words the judgment of the Trial court acquitting the petitioner in FIR No.26 dated 22.02.2006 has since attained finality. Such factual premise is not controverted by learned State Counsel.

In view of the above, the impugned order of dismissal dated 12.05.2006 (Annexure P-2) as also the order passed by the Appellate Authority at Annexure P-3, are set aside.

Matter is remanded to the punishing authority for passing of an order afresh.

It is, however, clarified that pursuant to the setting aside of the dismissal order, petitioner would be reinstated in service on the post of Constable. However, upon reinstatement he would not be entitled to the consequential service benefits of seniority, arrears of pay etc. for the period he remained out of job and the same would be subject to the outcome of the fresh order that has been directed to be passed by the competent authority.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

January 13, 2020

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No