

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

CWP-18508-2020 (O&M)

Date of decision: 19.05.2021

PARAMJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB AND ORS.

... Respondents

CWP-18417-2020 (O&M)

RESHAM SINGH

... Petitioner

Versus

STATE OF PUNJAB AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Kanwar P. Singh, Advocate for the petitioner.

Ms. Maloo Chahal, DAG, Punjab.

ANIL KSHETARPAL, J.

Through this judgment, CWP No.18508 and 18417 of 2020 filed against a common order passed by the competent authority dismissing the writ petitioners from service in exercise of powers under Rule 16.1 read with Section 7, The Police Act, 1861 and Article 311(2)(b) of the Constitution of India has been assailed.

In CWP No.18508 of 2020, Paramjit Singh is the petitioner whereas Resham Singh has filed CWP No.18417 of 2020. Paramjit Singh at the relevant time was working as Constable whereas Resham Singh was

working as Head Constable (Driver). As per the case of the respondent-State, as many as four police officials were deputed to take two criminals namely Harpreet Singh son of Swaran Singh and Gurpreet Singh @ Gopi son of Gurwinder Singh from Central Jail, Amritsar, to the Court of Additional Sessions Judge, Jalandhar, for appearance. They took the accused persons from Central Jail in a government vehicle but abandoned the same on the way with Head Constable Resham Singh and took the accused persons in a private vehicle. After producing them before the Court, instead of straightway bringing them back to Central Jail, Amritsar, they went to a rented accommodation of accused Harpreet Singh where his wife was already present and thereafter both the accused were allowed to flee away. It is also alleged that when the accused were taken out of the prison, Harpreet Singh was allowed to talk to his wife Harjit Kaur multiple times on the mobile phone of Constable Sukhwinder Singh. It was noticed that both the accused are involved in approximately one dozen criminal cases each. The competent authority vide order dated 27.06.2019 dispensed the service of the petitioner on the ground that it would not be correct to hold departmental inquiry against these officials because due to their fear, none is likely to come forward to depose in the departmental inquiry.

Appeal against the order passed by the competent authority has also been dismissed resulting in filing of these two writ petitions. Pursuant to notice of motion, reply has been filed. It has been disclosed that against Paramjit Singh various orders of punishment have been passed. It has

further been stated that the competent authority recorded its satisfaction in the order itself that it will not be practicable to hold inquiry.

Heard learned counsel for the parties at length and with their able assistance, perused the paper book. It may be noted here that after the judgment was reserved, the original record was requisitioned and examined.

Learned counsel for the petitioner while relying upon judgment passed in **Ex. Constable Chote Lal vs. Union of India, (2000) 10 SCC 196** contends that the decision of the competent authority to dispense with the inquiry was not appropriate. The satisfaction recorded by the officer is neither reasonable nor practicable. The reason assigned in the order while dispensing with the requirement of regular inquiry that no one would depose against the petitioner has no basis.

Per contra, learned State counsel has submitted that the petitioners being members of the disciplinary force have committed a heinous crime by allowing the hardcore criminals to escape. Hence, she appeals for upholding the order.

This Court has considered the submissions. Article 311 of the Constitution of India confers a constitutional protection upon a delinquent which cannot be dispensed with, easily and arbitrarily merely in order to avoid the holding of an inquiry. On careful reading of proviso (b) to Article 311(2), it is apparent that the competent authority is required to be satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. For this purpose, following

three ingredients are necessary:-

1. The delinquency should be such which would call for such punishment.
2. The satisfaction of the competent authority is necessary.
3. The reasons have to be recorded in writing.

A word of caution that it is not necessary that the reasons must be recorded in the order of removal itself as the reasons can be recorded on the file. Now, let us examine the facts of the present case. The petitioners are Constable and Head Constable. Against Paramjit Singh already various inquiries have been held and he has been penalised on as many as six occasions previously. Still further, neither in the order nor in the written statement nor on the file, there is any plausible reason to dispense with the inquiry. The Article 311(2) requires the competent authority to record reasons for its satisfaction that it is not reasonably practicable to hold the inquiry. In the present case, although the competent authority has written that due to the fear of the petitioners, nobody will come forward to give statement, however, there does not appear to be any material in support thereof. On careful perusal of the file which has been requisitioned, it is apparent that apart from the aforesaid facts, no other material has been examined. Still further, this incident is of 14.06.2019. On that day itself, FIR was registered against the accused as well as police officials including the petitioners, herein. Thereafter, the competent authority passed the impugned order on the basis of the report dated 23.06.2019. On careful reading of the

said report, it is apparent that appropriate reasons to show that the holding an inquiry is impracticable have not been given.

This aspect has already been examined by the Hon'ble Supreme Court in **Jaswant Singh vs. State of Punjab, (1991) 1 SCC 362 and (2006) 13 SCC 581**. The Hon'ble Supreme Court relying upon the judgment passed by a Larger Bench in **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC 398** held that the reasons for recording satisfaction must be borne out from the record and in absence thereof, such order cannot be sustained. Similarly, in the case of **Ex. Constable Chote Lal (supra)**, the Court held that a police constable cannot be expected to have influence over the witness. The Court held that on such basis, the inquiry cannot be dispensed with.

On careful reading of Article 311 of the Constitution of India, it is apparent that no public servant shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges framed against him and given a reasonable opportunity of being heard. Second proviso to Article 311(2) lays down exceptions. Clause (b) enables the authority to dispense with the inquiry if the authority is satisfied for the reasons to be recorded by that authority in writing that it is not reasonably practicable to hold such inquiry. Thus, the authority who is required to take a decision to dispense with the service of a public servant, has to be satisfied for the reasons to be recorded that it is not reasonably practicable to hold departmental inquiry.

On careful reading of the impugned order, it becomes clear that

the competent authority has recorded that in the regular inquiry witnesses will be prepared to come forward to give statements. Apparently, the aforesaid reason is incorrect. The departmental inquiry cannot be dispensed with by recording reasons which have no foundation. The petitioners were on the lowest rank in the police department on the lowest ranks. The competent authority has also observed that the petitioners have lowered the reputation of the department and it would not be in public interest to continue with the employment of such persons. It is further observed that the petitioners are guilty of grave and serious offence.

In the considered view of this Court while passing order of dispensing with the requirement of holding departmental inquiry against delinquent officials, the competent authority is required to examine how and in what manner it would not be practicable to hold departmental inquiry. It is only on the basis of the aforesaid reason, the requirement to hold departmental inquiry can be dispensed with. The competent authority has no doubt, recorded that the witnesses would not come forward to give their statements against the petitioners however, for that there is no basis. The Deputy Superintendent of Police while submitting his report has recommended a departmental inquiry. On careful examination of the files, it is apparent that there is no material to arrive at such conclusion. Hence, the decision of the competent authority to dispense with the requirement of holding regular inquiry is not sustainable.

Keeping in view the aforesaid facts, the orders under challenge

are set aside. However, in the facts of these cases, it is declared that the petitioners shall not be entitled to be reinstated in the service. They will continue to be under suspension. The official respondents are directed to complete the departmental inquiry in accordance with law within a period of six months positively.

With these observations, the writs are allowed.

19.05.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No