

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

CWP No.2448 of 2020 (O&M)

Reserved on: 25.07.2022

Pronounced on: 26.08.2022

Sher Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashok Paul Batra, Advocate, for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

JAISHREE THAKUR.J

1. This writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari for setting aside order dated 28.05.2015 (Annexure P-6) of the Senior Superintendent of Police, Ferozepur, whereby the petitioner was dismissed from service w.e.f. 28.05.2015 by dispensing with departmental inquiry by invoking Article 311(2)(b) of the Constitution of India, as well as the order passed by the Deputy Inspector General of Police, Ferozepur, dated 18.03.2017 (Annexure P-8), and the order of Director General of Police, dated 25.09.2019 (Annexure P-12). The petitioner has also prayed for reinstatement in service w.e.f. 28.05.2015 and to grant him all consequential benefits.

2. In brief, the facts as stated are that the petitioner was appointed as Constable in Punjab Police and joined on 14.02.1994. He was

subsequently promoted to the rank of Head Constable on completion of 16 years of service. During this time, there was no complaint pending against him. He discharged his duties to the utmost satisfaction of his superiors and played an important role in effecting recovery of huge quantities of psychotropic substances and narcotic drugs. In fact, vide letter dated 29.01.2015, the case of the petitioner for promotion was recommended. However, on the disclosure statement of one Sukhwinder Singh @ Baggi, who was an accused in FIR No.59, dated 18.05.2015, under Sections 21 and 22 of the NDPS Act, Police Station Cantt. Ferozepur, as he was apprehended with 50 grams of heroin, the petitioner and one ASI Rajinder Pal were nominated as accused. On the basis of having been nominated as accused in the FIR, the petitioner was dismissed from service w.e.f. 28.05.2015 by dispensing with departmental inquiry by invoking Article 311(2)(b) of the Constitution of India. Similarly, ASI Rajinder Pal who too had been implicated in the said case was dismissed. The petitioner filed departmental appeal which was dismissed by the Deputy Inspector General of Police vide order dated 18.03.2017. However, the appeal filed by ASI Rajinder Pal was allowed by the Deputy Inspector General of Police, Ferozepur Range vide order dated 01.09.2016. The revision petition filed was dismissed as well. In the said FIR, both, the petitioner and ASI Rajinder Pal were honorably acquitted vide judgment dated 21.11.2018 passed by the Judge, Special Court, Ferozepur. After acquittal, the petitioner applied to the Director General of Police for reinstatement. However, the same did not yield any result. Hence, the present writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner is governed by the Punjab Police Rules, 1934, as applicable to the State of Punjab (Rules 1934, for short) and as per said Rules, a punishment of dismissal is a major penalty and can only be awarded for the gravest act of misconduct which is prescribed under Rule 16.24 of Rules 1934. It is submitted that the only basis of awarding the punishment of dismissal and dispensing with inquiry under Article 311(2)(b) of the Constitution of India by the Senior Superintendent of Police was the alleged implication of the petitioner in the aforesaid FIR. Moreover, the order dismissing the petitioner from service without holding departmental inquiry does not record any cogent reason for dispensing with the said inquiry. It is submitted that the petitioner was nominated as an accused on the basis of a disclosure statement which itself could not have been relied upon and, therefore, without taking this factor into account, the petitioner was dismissed. It is submitted that in fact the petitioner stands acquitted under the said FIR which order of acquittal has been ignored while dismissing the mercy petition filed. Even otherwise, the petitioner herein would be entitled to parity of reinstatement considering the fact that ASI Rajinder Pal has been reinstated, who was also nominated as an accused under the said FIR.

4. Learned counsel for the petitioner would rely upon judgment rendered in ***Rajendra Yadav Versus State of M.P. and others, 2013(3) SCC 73*** in support of his argument that doctrine of equality applies to all who are equally placed. He would also rely upon judgment rendered in ***Tata Engineering & Locomotive Co. Ltd. Versus Jitendra Pd. Singh and another, 2001(10) SCC 530*** where in a domestic enquiry, a lesser

punishment was afforded on one of the three workmen who had been found guilty of misconduct. It was held that it would be denial of justice if only one person was singled out for punishment. Reliance has also been placed upon judgement rendered in ***State of U.P. Versus Raj Pal Singh, 2010(5) SCC 783***. Apart from the aforesaid judgments, counsel would also rely upon a judgment rendered in ***Gurcharan Singh Versus State of Punjab and others, 2013(2) S.C.T. 133***, wherein it has been held that merely stating that no body would depose against the petitioner on account of fear, is not sufficient. He would further rely upon judgments rendered in ***Ramesh Chand Versus State of Punjab and others, 2013(4) S.C.T. 830; Indian Railway Construction Co. Ltd. Versus Ajay Kumar, 2003(2) S.C.T. 291; Reena Rani Versus State of Haryana and others, 2012(10) SCC 215***.

5. On the other hand, learned State counsel would vehemently argue that the petitioner herein had been nominated as an accused in FIR No.59 on the basis of disclosure statement made by Sukhwinder Singh who had been caught in possession of 50 grams of heroin. It is submitted that Article 311(2)(b) of the Constitution of India had been invoked as the petitioner herein was an influential person and no person would step forward to depose against him. She has relied upon a judgment rendered in ***LPA No.565 of 2020*** titled as ***State of Haryana and others Versus Satish Kumar***, decided on 30.05.2022, where the appeal filed by the State was allowed and the writ petition of the delinquent employee, who was facing both departmental and criminal proceedings, and had been ordered to be reinstated in service on acquitted by the criminal court, had been dismissed.

6. I have heard learned counsel for the parties and with their assistance, have gone through the pleadings of the case and the law as cited.

7. The facts of the case are not in dispute in so far as the petitioner was appointed as Constable in the year 1994 and then subsequently promoted to the post of Head Constable. It is also not in dispute that his name was recommended for promotion by the Senior Superintendent of Police, Ferozepur on account of good work done by him in effecting recoveries in the drug smuggling cases. However, the petitioner came to be nominated as accused on the basis of disclosure statement in FIR No.59, consequent to which, he was dismissed by invoking Article 311(2)(b) of the Constitution of India. The reason for dispensing with departmental enquiry given is “*as the undesirable persons who have been obliged by this ASI (Local Rank) are under his influence and as such they are not likely to depose against him*”. It is also not in dispute that the appeal, revision and mercy petition before the competent authorities stand dismissed. However, the petitioner and co-accused ASI Rajinder Pal, who had also been nominated as accused on the basis of disclosure statement, were honorably acquitted by the Judge, Special Court, Ferozepur, vide judgment dated 21.11.2018, holding that “*the prosecution has failed to prove its case beyond all reasonable doubts against accused Sher Singh and Rajinder Pal and as such both these accused are acquitted of the charges framed against them.*”

8. The argument raised by the counsel for the petitioner is that the petitioner was not given a chance to defend himself since he had been dismissed summarily by invoking Article 311 (2) (b) of the Constitution of

India without holding any departmental inquiry against him. Article 311 (2) (b) of the Constitution of India 1949 reads as:-

“(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.”

A bare reading of the Article itself would show that the authority who is empowered to dismiss or remove a person or to reduce his rank, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. This reasoning is missing in the impugned order, wherein the only consideration is that *“as the undesirable persons who have been obliged by this ASI (Local Rank) are under his influence and as such they are not likely to depose against him”*.

9. There are a catena of judgments available to the effect that departmental enquiry cannot be dispensed with solely on the whims and fancies of the concerned authorities. It is incumbent upon the authorities to support the order as to why departmental enquiry is being dispensed with. (see: ***Prem Saran Bansal Versus State of Punjab and others 2014 (4) SCT 481; Gurcharan Singh Versus State of Punjab, 2017 (1) SCT 712; CWP No.14712 of 2017*** titled as ***Rakesh Kumar Versus State of Punjab and others***, decided on 25.04.2022; ***CWP No.21419 of 2020*** titled as ***Bikramjit and another Versus State of Punjab and others***, decided on 23.02.2022; ***CWP 13847 of 1995*** titled as ***Constable Harinder Kumar Versus State of Punjab and another***, decided on 24.10.2013; ***CWP No. 890 of 2011*** titled as ***Pammi Ram Versus State of Punjab and others***, decided on 04.02.2013; ***CWP No.10423 of 2020*** titled as ***Sarabjit Singh Versus State of Punjab and another***, decided on 01.09.2020; ***Baljit Singh Versus Senior Superintendent of Police, Amritsar 2008 (1) S.C.T. 686*** and ***Union of India Versus Tulsi Ram Patel, 1985 (2) SLR 576***. A reading of the order whereby the petitioner stands dismissed from service does not reflect any cogent reason as to why it is not practicable to hold enquiry. It is well settled that the competent authority is required to record reasons based on “*relevant material*” for reaching a conclusion or the satisfaction that the enquiry is not reasonably practicable. There is no such finding in the impugned order and, therefore, the same is liable to be set aside.

10. The judgment as relied upon by the counsel for the respondent-State in ***State of Haryana and others Versus Statish Kumar*** (supra) is distinguishable on facts. In that matter, the delinquent employee therein was

faced with both departmental proceedings as well as proceedings under the FIR, whereas in the instant case, the petitioner was dismissed from service by invoking Article 311(2)(b) of the Constitution of India.

11. The other arguments raised by learned counsel appearing on behalf of the petitioner is with regard to disparity of treatment meted out to the petitioner and ASI Rajinder Pal who were both nominated as accused on the basis of disclosure statement of Sukhwinder Singh in FIR No.59. It is pertinent to note that both Rajinder Pal and the petitioner were dismissed from service on the same date i.e. 28.05.2015 by invoking Article 311(2)(b) of the Constitution of India, however, the appeal filed by the petitioner was dismissed whereas the appeal of Rajinder Pal was allowed vide order dated 01.09.2016 by taking into account that no recovery was effected from him. The previous service record of Rajinder Pal was taken into account while reinstating him from the date of order of dismissal as passed by the SSP, Ferozepur. He was also made entitled to get his salary and other allowances for the duration except the period that he had been kept in jail, whereas the appeal of the petitioner was rejected as was the revision petition on the ground that he was arrested near a bus stand and on his personal search, Rs.50,000/- had been recovered from him and Rs.3,70,000/- were recovered from his bed at his house along with 260 grams of intoxicant powder. Counsel would argue that the criminal court has gone into this issue and found him to be totally innocent. Even the alleged recovery has been disbelieved and vide order dated 07.09.2019, the money so recovered has been released to him. The money allegedly recovered has been found to be his personal amount.

12. In view of above, the action of the punishing authority imposing comparatively lighter punishment to the co-accused Rajinder Pal and at the same time, harsher punishment to the petitioner herein, cannot be permitted in law since they were both involved in the same FIR, dismissed from service on the same day and acquitted by the same judgment. The ratio as held in the judgement rendered in ***Jitendra Pd. Singh and another's case (supra)*** would be applicable in this case.

13. Consequently, the writ petition is allowed and the impugned order dated 28.05.2015 dismissing the petitioner from service (Annexure P-6) is set aside, along with the subsequent orders passed in appeal and revision, leaving it open to the department to take departmental action against him in accordance with law, in case so desired.

(JAISHREE THAKUR)
JUDGE

26.08.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No