

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

CWP No.3201 of 2022 (O&M)

Reserved on 09.08.2022

Pronounced on: **26.08.2022**

Gurwinder Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR.J

1. By way of instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner herein seeks to quash the order dated 11.08.2019, Annexure P-2, passed by Senior Superintendent of Police, Tarn Taran, respondent No.4, dismissing him from service by invoking provisions of Article 311(2)(b) of the Constitution of India; orders dated 14.03.2019, Annexure P-3, and dated 01.10.2021/09.10.2021 (Annexure P-9) passed by respondents No.3 and 2 respectively, whereby his appeal against the order of dismissal dated 11.08.2018 was dismissed. He has also prayed for reinstatement in service with all consequential benefits.

2. In brief, the facts of the case as stated are that an FIR No.15, dated 10.08.2018, under Sections 342/120-B IPC and Sections 7, 13(2) of Prevention of Corruption Act, 1988 was registered at Police Station

Vigilance Bureau Range, Amritsar, against the petitioner along with other police officials with the allegation that they raided the house of one Harbhupinder Singh, in Village Kamal Wala, District Ferozepur without any permission/notice to senior officers and kept him in illegal police custody for two days. For releasing the said person from police custody, one member of the raiding party, HC Balwinder Singh, was apprehended at the spot by the Vigilance Department while accepting Rs.50,000/- as bribe. The role of the petitioner is that he played an active part in the raiding party. On 11.08.2018 i.e. the next day of the FIR, the petitioner along with others (HC Balwinder Singh and Risal Singh) were dismissed from service by the Senior Superintendent of Police, Tarn Taran, whereas Inspector Preetinder Singh, SHO, Police Station Sadar Patti, District Tarn Taran, was dismissed by Inspector General of Police Border Range, Amritsar. Against the said order of dismissal, the petitioner filed statutory appeal, which was dismissed vide order dated 14.03.2019 by the Inspector General of Police, Border Range, Amritsar, respondent No.3 herein. Thereafter, he filed mercy appeal before the Director General of Police, Punjab, and the same was also dismissed vide order dated 01.10.2021 (Annexure P-9). Aggrieved against the said order of dismissal from service, the petitioner has approached this Court by way of instant writ petition.

3. Learned counsel for the petitioner would contend that within a day of registration of the FIR and without affording any opportunity of hearing, enquiry/show cause notice etc., the petitioner had been dismissed from service by invoking Article 311(2)(b) of the Constitution of India. It is submitted that the order of dismissal does not contain any cogent reason for

dispensing with the departmental inquiry. He would argue that the similarly situated persons, who were involved in the instant FIR, were reinstated in service, but a different yardstick has been adopted against the petitioner. He has prayed for parity i.e. reinstatement in service alongwith all consequential benefits.

4. Mr. Vivek Salathia, learned counsel for the petitioner has relied upon judgments rendered in ***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 and ***Baljit Singh Versus Senior Superintendent of Police, Amritsar 2008 (1) S.C.T. 686***, in support of his argument, that a regular departmental inquiry can be dispensed with only under exceptional circumstances. There has to be some material available to hold that it would not be practicable to hold a departmental inquiry.

5. Per contra, Mr. Pawan Sharda, senior Deputy Advocate General, Punjab, appearing on behalf of the respondents-State would submit that the petitioner herein had played an active role in the occurrence leading to

registration of FIR No.15 against him and other police party members and was rightly dismissed from service.

6. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

7. The petitioner stands dismissed from service by taking into account the FIR that has been registered against him. His dismissal is by invoking Article 311 (2) (b) of the Constitution of India thereby dispensing with the normal procedure of holding a departmental inquiry. 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 without holding a departmental inquiry, 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 “*departmental enquiry is not required to be conducted as because of their fear, nobody will come forward to record his statement against them, hence for their above offence, by taking into consideration Article 311(2)(b) of the Constitution of India, departmental enquiry against them is not deemed appropriate and it will not be in the interest of the public to keep these persons in the service of the police department.*”

8. In the case of ***Union of India Versus Tulsi Ram Patel, 1985 (2) SLR 576***, the Hon'ble Supreme Court observed that clause (b) of the second provision to Article 311 of the Constitution of India can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental inquiry. Relevant observations in this regard are as under: -

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail."

Mere registration of an FIR would not be sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a

departmental inquiry before dismissing a delinquent employee. In case of conviction, the situation is altogether different as has been specified in Article 311 (2) (a) of the Constitution of India. As noticed above, adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental inquiry. In ***Constable Harinder Kumar's case (supra)***, the delinquent was dismissed from service on registration of two FIRs, one under Section 401 of IPC and the other under Section 25 of Arms Act, 1959 without holding any departmental inquiry on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, therefore he was not fit to be retained in the police force. It was held that mere registration of FIR is not valid ground to dispense with holding a regular inquiry. A similar view has been taken in the cases of ***Prem Saran Bansal and Gurcharan Singh's cases (supra)***.

9. On perusal of impugned order of dismissal, it is apparent that no reasons whatsoever have been recorded to show as to why it is not possible to hold an inquiry. A mere observation that “*because of their fear, no body will come forward to record his statement against them*”, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee. The punishing authority has also not placed any reliance on any material to even suggest that any threat has been exercised from the side of petitioner upon any witness.

10. Moreover, counsel for the petitioner has pointed out that on the basis of FIR No.15, four police officers were dismissed by invoking Article 311(2) (b) of the Constitution of India, depriving them of a right to defend themselves. It is contended that while investigation was conducted, Inspector Preetinder Singh was found to be innocent and kept in column No.2. As far as the investigation was conducted pertaining to the petitioner and three others, they too were found to be innocent and kept in column No.2 in the final report presented under Section 173 Cr.P.C. Dismissal order of Preetinder Singh has been recalled and he has been reinstated in service. Head Constable Rasal Singh approached this Court by way of filing CWP No.3204 of 2022 challenging the order passed under Article 311 (2) (b) of the Constitution of India, which writ petition stood allowed on the ground of a statement made by the Assistant Advocate General, Punjab (on instructions received) that the impugned order stood withdrawn and that the disciplinary authority would pass fresh orders. In such a situation, the petitioner would be discriminated against if the impugned order is allowed to stand.

11. Consequently, the writ petition is allowed and the impugned order dismissing the petitioner from service vide order dated 11.08.2018 (Annexure P-2) along with the subsequent orders passed in appeal are set aside, leaving it open to the department to initiate departmental action against the petitioner in accordance with law, if so desired.

26.08.2022

sanjeev

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No