

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

**CWP No. 7727 of 2019 (O&M)
Reserved on : May 24, 2022
Date of Pronouncement : May 27, 2022**

Jarnail Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.S. Sekhon, Advocate,
for the petitioner.

Mr. K.K. Bheniwala, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. By way of instant writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks to quash order dated 13.11.2017 (Annexure P/3) by which the petitioner stands dismissed from service by invoking the provisions of Article 311 (2) (b) of the Constitution of India, and orders dated 14.3.2018 and 17.12.2018 (Annexures P/4 and P/5 respectively), vide which the appeal and the revision filed by the petitioner against the order dated 13.11.2017 were dismissed by Deputy Inspector General of Police, Patiala Range, Patiala and the Director General of Police, Punjab.

2. In brief, the facts of the case are that the petitioner was appointed as Constable on 10.11.1989. On 13.11.2017, when the petitioner

was posted in Police Lines, Sangrur, as a Head Constable, a FIR No. 368 under Sections 353, 186, 120-B IPC, Sections 42 and 52 of the Prisons Act, 1894 and Section 29 of the Police Act, 1861 came to be registered against him at Police Station City Sangrur, District Sangrur. In the FIR, it was alleged that the petitioner threw *biris, jarda and a mobile phone* inside the District Jail, Sangrur to a prisoner, namely Sukha Singh son of Mitthu Singh, resident of Lehra and when he was apprehended he had a scuffle with a jail official and he obstructed him from performing his duty. On the registration of the FIR, the Senior Superintendent of Police, Sangrur—respondent No. 5 dismissed the petitioner from service on 13.11.2017 itself, by invoking Article 311 (2) (b) of the Constitution of India, holding that there is no need to hold a departmental inquiry as there is possibility that the witnesses will not give evidence against this police officials due to threat or this official can misuse the post can give threat to the witnesses or can win them over.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has clean service record and he had 28 years of service to his credit and he never involved any illegal activities during his service career. A false and frivolous FIR has been registered against the petitioner, in which the petitioner has been granted regular bail by this Court in **Criminal Misc. M No. 45144 of 2017 titled as ‘Jarnail Singh Vs State of Punjab on 19.12.2017**. It is submitted that the order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. Learned counsel relies upon judgments rendered in

CWP No. 14712 of 2017 titled Rakesh Kumar Versus State of Punjab and others decided on 25.4.2022, CWP No. 21419 of 2020 titled Bikramjit and another Versus State of Punjab and others decided on 23.2.2022, CWP 13847 of 1995 titled Constable Harinder Kumar Versus State of Punjab and another decided on 24.10.2013, CWP No. 890 of 2011 titled Pammi Ram Versus state of Punjab and others decided on 4.2.2013, CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020 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. It is argued that no cogent reason has been given for dispensing with the inquiry proceedings. There has to be some material available to hold that it would not be practical to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioner herein does not hold a good service record, as claimed. In fact, the petitioner was awarded punishment of five censures and forfeiture of 2 years service on 13.10.2005. It is submitted that there are serious allegations against the petitioner. He was found throwing *biris, jarda and a mobile phone* inside the District Jail, Sangrur to a prisoner, namely Sukha Singh and on being apprehended he also had a scuffle with a jail official and he obstructed him from performing his official duty. It is submitted that there are convicts and anti-social persons confined in the jail and a mobile phone can be misused by the

prisoners and anti-social elements confined in the prison for contacting their accomplices outside the jail. The mobile phone in possession of the anti-social elements and drug smugglers can be a danger to the security of the country. Due to this illegal act of the petitioner, the image of the police department has tarnished and it was a very big blot on the name of the police department. Therefore, the petitioner was rightly dismissed from service by the impugned order.

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

6. The petitioner stands dismissed from service by taking into account the FIR that has been filed 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 enquiry under Rule 16.24 of the Punjab Police Rules 1934. 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.

7. 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 “it is the *possibility that the witnesses will not give evidence against this police officials due to threat or this official can misuse the post can give threat to the witnesses or can win them over.*”

8. In the case of **Union of India Vs. Tulsi Ram Patel, 1985 (Suppl) 2 SCR 131**, the Hon'ble Supreme Court observed that clause (b) of the second provision to Article 311 of the Constitution 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 enquiry. 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."

9. 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 enquiry 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 enquiry. In **Constable Harinder Kumar's case (Supra)**, the delinquent was dismissed from service on registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 without holding any departmental enquiry 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 **Pammi Ram** and **Sarabjit Singh (Supra)**.

10. 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 *“it is possibility that the witnesses will not give evidence against this police officials due to threat or this official can misuse the post can give threat to the witnesses or can win them over,”* would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

11. Consequently, the writ petition stand allowed and the impugned order dismissing the petitioner from service vide order dated 13.11.2017 (Annexure P/3) is set aside, leaving it open to the Department to take departmental action in accordance with law.

May 27, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No