

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.7514 of 2022 (O&M)
Date of Decision.16.11.2022

Harjit Singh

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Khandelwal, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

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JAISHREE THAKUR J. (ORAL)

The present writ petition has been filed seeking to challenge order dated 21.08.2017 (Annexure P-1) whereby the petitioner has been dismissed from service by invoking Article 311 (2) (b) of the Constitution of India and orders dated 16.02.2018 (Annexure P-2) and 11.03.2019 (Annexure P-3) whereby the appeal and revision respectively, preferred against the aforesaid order, too stand dismissed.

Learned counsel appearing for the petitioner herein would contend that four persons were nominated as accused in FIR No.4 dated 04.08.2017 under Sections 365, 384, 120-B IPC (419, 489 IPC added later on) and Sections 21, 29 of the NDPS Act and Sections 7, 13(2), 8 of the Prevention of Corruption Act registered at Police Station STF, Phase 4, SAS Nagar, Mohali. The allegations as set up in the FIR were that the petitioner along with other co-accused was hobnobbing with dreaded criminals and drug smugglers for extortion of money in guise of official duty. The petitioner herein on the basis of alleged FIR has been dismissed from service

by dispensing with departmental proceedings on the ground that holding of departmental enquiry would not be reasonably practicable. The reason given for dispensing with the departmental enquiry was that the petitioner was in custody and it would not be possible to cross-examine him. The appeal and revision filed against the order of dismissal order also stood rejected by the Inspector General of Police, IRB, Punjab, Patiala and Assistant General of Police, Counter Intelligence, Punjab, Bathinda respectively.

It is argued that all four accused in the aforesaid FIR were dismissed by invoking Article 311 (2) (b) of the Constitution of India. Two of the accused namely SI Sushil and Constable Gagandeep approached this Court by filing CWP Nos.19344 of 2019 and 34138 of 2019 respectively challenging their orders of dismissal passed by invoking Article 311 (2) (b) of the Constitution of India. During the pendency of these proceedings, the State chose to withdraw orders of dismissal with liberty to pass fresh orders. It is contended that after the writ petitions were disposed of, two similarly situated accused are facing departmental proceedings and the petitioner is ready to face the same.

Learned counsel appearing for the respondent-State would submit that the allegations as set out in the FIR would show that petitioner herein was involved with drug smugglers and extorted money, therefore, his conduct does not behove any personnel of disciplinary force and that is why it was expedient to dismiss him from service. Moreover, the petitioner was lodged in Central Jail, Patiala and therefore, it would not have been possible to conduct a regular departmental enquiry.

I have heard learned counsel for the parties and have perused pleadings of the case and find that the order of dismissal as passed is not

sustainable, considering the fact that the State itself chose to withdraw the impugned orders passed against the co-accused, who were nominated under the same FIR, on the same set of allegations. Even otherwise, 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 it 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 a sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental inquiry while 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 the judgment rendered by this Court in **CWP 13847 of 1995 titled Constable Harinder Kumar Versus State of Punjab and another decided on 24.10.2013**, 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 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 a valid ground to dispense with holding a regular inquiry.

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 *“for departmental proceedings, the presence of delinquent official is required to receive the charge-sheet, to cross examine the witnesses and for submitting written requests and examining defence witnesses, which is not possible at this stage because he is in custody.....Direct witnesses and evidence in this case is hard to come by as the offence is committed secretly and all accused are hand-in-glove with each other”*, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

Consequently, the writ petition stands allowed and the impugned orders dated 21.08.2017, 16.02.2018 and 11.03.2019 dismissing the petitioner from service are set aside, leaving it open to the department to take departmental action against the petitioner in accordance with law.

(JAISHREE THAKUR)
JUDGE

November 16, 2022

Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No