

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

CWP No.8222 of 2022 (O&M)

Date of Decision:28.7.2022

Jaswinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Arora, Advocate,
for the petitioners.

Ms. Deepali Puri, Addl. A.G., Punjab.

JAISHREE THAKUR, J. (ORAL)

C.M. No.11091 of 2022

Application is allowed.

Replication is taken on record.

CWP No.8222 of 2022 (O&M)

1. By way of instant writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks to quash order dated 02.06.2018 (Annexure P-3) passed by respondent No.4 whereby petitioner has been dismissed from service and order 26.01.2019 (Annexure P-5) passed by respondent No.2 vide which the appeal filed by the petitioner against the order dated 02.06.2018 stands dismissed

2. In brief, the facts of the case are that an FIR No.28 dated 01.02.2018 under Sections 25(1B) (a) (c), 26, 35 of the Arms Act, 1959 and Section 27 of the NDPS Act, 1985 at Police Station Chowk, Patna, Bihar was registered against the petitioner, while he was posted as Constable in District Jalandhar. The FIR was registered on the basis of a secret

information and the petitioner along with others was apprehended with one country made pistol, six live cartridges, 100 gms ganja and 4 empty bottles of Rekofdix syrup. On the basis of the registration of the FIR, the Commissioner of Police, Jalandhar—respondent No.4 dismissed the petitioner from service on 02.06.2018, by invoking Article 311 (2) (b) of the Constitution of India and Rule 16.1 of the Punjab Police Rules, 1934. The appeal preferred against the order dated 02.06.2018 also stood dismissed vide order dated 26.01.2019 passed by respondent No.2. Hence, writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has clean service record and he never involved in any illegal activities during his service career. A false and frivolous FIR was registered against him as no recovery whatsoever was effected from him. It is submitted that the impugned order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. Learned counsel relies 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 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 practicable to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioner herein had been indulging in illegal narco trade activities by misusing his official position. The petitioner being member of a disciplined force was supposed to take strict action against the people involved in smuggling/selling of drugs. However, instead he himself was indulging in illegal narco trade activities and, therefore, the petitioner was rightly dismissed from service by the impugned order. It is further submitted that vide separate order dated 01.06.2018, reasons have been recorded as to why it is not possible and practicable to hold an enquiry against the petitioner, which are reproduced as under:-

“(a) Constable Jaswinder Singh No.3453/Jal has been involved in a very heinous crime of dealing in illegal weapons and was arrested in Patna, Bihar. It will not be practicable to conduct a DE in this case due to the distance and bringing evidence on record would be very difficult, close to impossible and would derail the process of inquiry. Getting a copy of the FIR itself took a few months' time.

(b) The official had come in bad light while indulging in drugs. On the assurance of then ADCP, City-1, he was given a

compassionate opportunity to improve himself. However, he absented himself instead and did not get treated. Instead he indulged in crime. Hence he shall continue to bring disrepute to the department and would be a bad influence on the peer group.

(c) He has a habit of absenting without leave and it may happen in future too. A departmental enquiry had to be kept pending as he had absented without leave to delay and derail the process.

(d) He has brought disrepute to the department when a video of his went viral and took no steps to improve his conduct.”

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 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.

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. The petitioner had already been released on regular bail vide order dated 27.04.2018 passed by the Patna High Court and therefore, the reasoning given that *"it will not be practicable to conduct a departmental enquiry due to the distance and bringing evidence on record would be very difficult, close to impossible and would derail the process of inquiry, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.*

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 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."

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 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 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 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)**.

10. The reasoning given vide order dated 01.06.2018 as to why it is not possible to hold a regular departmental inquiry is not plausible. Mere distance of place where the FIR is registered i.e. Patna, Bihar in the instant case and the facts that the petitioner is habitual absentee and he may remain absent without leave in future as well, cannot be said to be a reasonable ground to dispense with holding a departmental enquiry. Consequently, the

writ petition stands allowed and the impugned orders dismissing the petitioner from service vide order dated 02.06.2018 (P-3) and 26.01.2019 (P-5) are set aside, leaving it open to the department to take departmental action in accordance with law.

July 28, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No