

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

**CWP No. 9771 of 2019 (O&M)
Date of Decision: 21.10.2022**

Gurcharan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajbir Singh, Advocate
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner by way of instant writ petition is seeking to challenge the order dated 25.11.2017 (Annexure P/2) passed by Senior Superintendent of Police, Sangrur—respondent No.5, whereby he has been dismissed from service by invoking Rule 16.1 of the Punjab Police Rules, 1934 read with Article 311 (2) (b) of the Constitution of India and dispensing with regular departmental inquiry and orders dated 6.3.2018 and 14.12.2018 (Annexures P/3 and P/6 respectively), vide which the appeal and the revision filed by the petitioner against the order dated 25.11.2017 stood dismissed.

2. The brief facts of the case are that the petitioner was appointed as a Constable on 16.4.1988 and since then he had been performing his duty with due diligence, honesty, sincerity and to the entire satisfaction of his seniors. He was promoted as Head Constable. The petitioner had completed 29 years of service. In November, 2017, when he was posted on Guard Duty

at District Jail, Sangrur, an FIR No. 378 dated 25.11.2017 came to be registered under Sections 42 and 52 of the Prisons Act 1894 and Section 29 of the Police Act, 1861 against the petitioner alleging that on 24.11.2017 at about 5.45 p.m., the petitioner threw 70 bundles of *biri* in the jail premises to supply the same to prisoner Dalvinder Singh @ Babli, who was undergoing custody in FIR No. 13 dated 16.2.2017. On the basis of the said FIR, the petitioner was dismissed from service by impugned order dated 25.11.2017 (P-2) under Article 311(2) (b) of the Constitution of India. Aggrieved against the impugned order, the petitioner filed an appeal, which was dismissed by order dated 6.3.2018 (P-3) and even further revision filed by the petitioner was dismissed by order dated 14.12.2018 (P-6). Hence, the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the dismissal order has been passed in complete violation of principles of natural justice, as neither any opportunity of hearing was given nor any show cause notice regarding proposed punishment was given to him. It is submitted that the dismissal order has been passed in violation of the Punjab Police Rules, 1934, as under Rule 16.2 of the said Rules, it is imperative for the disciplinary authority to record a finding that the employee is guilty of gravest act of misconduct and is completely unfit for police service, so as to warrant dismissal as the sole punishment in the case, which satisfaction is lacking in the impugned order. It is submitted that in the impugned order, it has been alleged that the petitioner threw 70 bundles of *biri* in the jail premises, whereas in the FIR, the allegations are that 4 packets of *biri* were thrown. Thus, there is a material contradiction in the

allegations levelled against the petitioner, on the basis of which he has been dismissed from service. 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 **Gurcharan Singh Versus State of Punjab and others 2013 (2) SCT 133** and **Major Singh Versus state of Punjab and others 2017 (4) SCT 32** in support of his argument, that a regular departmental inquiry can be dispensed with only under exceptional circumstances. It is argued that purported reason for dispensing with the departmental inquiry is not supported by any document. There has to be some cogent 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 was posted on guard duty and while not assuming the significance of his duty, the petitioner connived with dangerous criminals confined in the jail and threw prohibited substance i.e. *Biri* in the jail premises. His coordination with dangerous criminals confined in jail was a big risk to prison and security of prisoners lodged therein. It is also submitted that the petitioner committed a grave misconduct by throwing *biri* to the inmates in the jail and thus he was rightly dismissed from service.

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

6. The sole allegation against the petitioner was that he, while posted on guard duty at District Jail, Sangrur, threw 70 bundles of *Biri* in the prison to supply the same to prisoner—Dalvinder Singh, who was

undergoing custody in jail in FIR No. 13. The petitioner stood dismissed from service for his aforesaid act and conduct. 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 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.”

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 practicable to hold such inquiry. This reasoning is missing in the impugned order, wherein the punishing authority, while passing the impugned order has observed “...it is not appropriate to initiate departmental enquiry against this employee under Punjab Police Rule 16.24, because if departmental inquiry is initiated against him then there is possibility that the witnesses shall avoid deposing against this police official due to fear or this employee can scare/threaten the witnesses while misusing his post or can depose them in his favour. Therefore, departmental inquiry is not being initiated against this police official...” A perusal of the observations made by the punishing authority would show that there is no substantial reason to dispense with the regular departmental inquiry.

7. 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."

Mere registration of a 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 **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 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 **CWP No. 890 of 2011 titled Pammi Ram Versus state of Punjab and others decided on 4.2.2013** and **CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020**.

8. 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 not appropriate to initiate departmental enquiry against this employee under Punjab Police Rule 16.24, because if departmental inquiry is initiated against him then there is possibility that the witnesses shall avoid deposing against this police official due to fear or this employee can scare/threaten the witnesses while misusing his post or can depose them in his favour. Therefore, departmental inquiry is not being initiated against this police official...’*,

would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

9. Consequently, the writ petition is allowed and the impugned order dated 25.11.2017 (Annexure P/2) dismissing the petitioner from service is set aside, leaving it open to the Department to take departmental action in accordance with law, if so desired.

10. At this stage, learned counsel for the petitioner submits that during the pendency of the writ petition, the petitioner has expired and, therefore, his legal heirs are entitled to pension and other retiral benefits as the petitioner had put in sufficient time qualifying service for the purpose of pension. It is argued that Rule 16.24 of the Punjab Police Rules, 1934 was not adhered to while dismissing the deceased employee. Since the impugned order dated 25.11.2017 (Annexure P/2) dismissing the petitioner from service without holding a regular inquiry is set aside, leaving it open to the department to take appropriate action, the case of the legal heirs be considered for grant of retiral benefits, pension etc, if any, in accordance with law. Appropriate decision be taken within a period of three months from date of receipt of this judgment or on legal heirs approaching the department with a certified copy.

11. The writ petition is allowed on the above terms.

21.10.2022

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

No