

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

**CWP No. 10473 of 2021 (O&M)
Reserved on : August 18, 2022
Date of Pronouncement : August 26, 2022**

Rajesh Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab.

JAISHREE THAKUR, J.

1. Challenge in the instant writ petition under Articles 226/227 of the Constitution of India is to the order dated 14.2.2020 (Annexure P/2) by which the petitioner stands dismissed from service by respondent No.4, while invoking the provisions of Article 311 (2) (b) of the Constitution of India, and order dated 1.3.2021 (Annexure P/4), vide which the appeal filed by the petitioner against the order dated 14.2.2020 was dismissed by respondent No.3.

2. In brief, the facts of the case are that the petitioner joined the Punjab Police as Constable on 10.7.1971, promoted as Head Constable in the year 2007 and as ASI (Local Rank) on 10.7.2019. At the time when the petitioner was discharging his duties as a Computer Operator in the office of respondent No.4, he was given temporary charge of Naib Reader with

ACP/West, Jalandhar, because of transfer of regular Reader. FIR No. 2 dated 21.1.2020 came to be registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988 on the allegation that he was apprehended while taking ₹5,000/- from one Rahul Wadhwan for disposal of his File No. 208/Travel Agent dated 5.12.2019, relating to grant of Licence of Visa Consultancy. The petitioner was arrested on 21.1.2020 and released on bail on 29.2.2020. On the registration of the FIR, the Commissioner of Police, Jalandhar—respondent No. 4 dismissed the petitioner from service on 14.2.2020, by invoking Article 311 (2) (b) of the Constitution of India, holding that as per the facts of this case, it is not reasonably possible to conduct a regular departmental inquiry against the petitioner as per Rule 16.24 of the Punjab Police Rules, 1934. The appeal preferred against the order dated 14.2.2020 also stood dismissed vide order dated 1.3.2021 passed by respondent No. 3. Hence the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has a clean service record and he had 28 years of service to his credit during which time he was not involved in any illegal activities. It is submitted that the petitioner earned as many as 139 Commendation Certificates during his service for his excellent performance of duties. It is also submitted that a false and frivolous FIR was registered against the petitioner. The fact of the matter is that the file submitted by the complainant in the FIR, namely, Rahul Wadhwan, for grant of licence of Visa Consultancy was incomplete as a site plan was required for the area in which he wanted to open the office of Visa Consultancy and for this reason he was called by the office to comply with the required provision for grant of licence.

He instead of completing the formalities, as required got a false FIR lodged against the petitioner. It is submitted that no amount of alleged illegal gratification of ₹5,000/- was recovered from the petitioner. It is also submitted that the order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry while further submitting that though in the impugned order it has been mentioned that the reasons have been recorded separately, yet no separate reasons were ever conveyed to him either by the punishing authority or by the appellate authority. 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 practical to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioner herein was caught red

handed receiving the bribe money and was arrested by the Police Station Vigilance Bureau, Jalandhar Range. The act of the petitioner falls within the confines of moral turpitude. His conduct showed that he is incorrigible and unfit for serving in the police department. It is also submitted that a separate detailed order was passed by the punishing authority specifying the reasons as to why regular departmental inquiry was dispensed with, concluding paragraphs of same are reproduced as under:-

“xx xx xx

I am also satisfied that it is not possible to conduct a regular departmental inquiry against him in the manner provided under Rule 16.24 of Punjab Police Rules as this official has worked as Reader with many officers and has influence on the general public. It is possible that if a departmental inquiry against him is initiated for seeking and receiving bribery then he can bring undue influence upon the complainant/witnesses and obtain undue advantage.

In the above mentioned situation, I have reached this conclusion that ASI/LR Rajesh Kumar No. 708/Jal who was attached with Assistant Commissioner of Police (West) Jalandhar as a reader has misused his Rank/Authority while being on a responsible post of a Reader and demanding and receiving bribery and getting caught red handed. This conduct has damaged the image of the police in the mind of the general public. The act of the above mentioned official is very serious misconduct which falls within the confines of the moral turpitude. This proves that he is incorrigible and unfit for the police department. His conduct is casting bad influence on other officials and for this reason it is not apt to retain him in Police Department and thus his services in the police department are not in public interest.

Therefore, I being a competent punishing authority, have reached this conclusion that in the exercising the powers conferred upon

me under Article 311 (2) (b) of Constitution India and Rule 16.1 of Punjab Police Rules do hereby dismiss ASI/LR Rajesh Kumar 708/Jal from police department on this day today dated 14.2.2020.”

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 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.

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. A perusal of the said impugned order would show that the punishing authority, after noticing the facts, has merely observed that he is satisfied that it is not possible to conduct a regular departmental inquiry against the petitioner. Reasons are the soul of justice, which are missing in the impugned order. The punishing authority has not applied its independent mind to the facts and circumstances of the case.

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 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 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. 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 possible that if a departmental enquiry against him is initiated for seeking and receiving bribery then he can bring undue influence upon the complainant/witnesses and obtain undue advantage"*, 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 stands allowed and the impugned order dismissing the petitioner from service vide order dated 14.2.2020

(Annexure P/2) is set aside and the subsequent orders thereafter, leaving it open to the Department to take departmental action in accordance with law.

August 26, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No