

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

(1) CWP No. 12366 of 2021 (O&M)
Reserved on : May 9, 2022
Date of Pronouncement : May 20, 2022

Baljit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2) CWP No. 25366 of 2021 (O&M)

Surinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate,
for the petitioner in CWP No. 12366 of 2021.

Mr. Amandeep Singh Jawandha, Advocate,
for the petitioner in CWP No. 25366 of 2021.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR, J.

1. By this common judgment, this Court proposes to dispose of above titled two writ petitions since a common question of law is involved and the petitioners are seeking to challenge the order of dismissal by invoking Article 311 (2) (b) of the Constitution of India and dispensing with

regular departmental inquiry. However, for the sake of brevity, the facts are taken from CWP No 12366 of 2021.

2. In the writ petition referred to above, the petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India with a prayer to quash order dated 30.4.2021 by which the petitioner stands dismissed from service by invoking the provisions of Article 311 (2) (b) of the Constitution of India.

3. In brief, the facts of the case are that the petitioner was appointed as Assistant Sub Inspector on 09.07.1996 and promoted as Sub Inspector on 29.5.2006 with a further promotion as Inspector on 11.4.2012. It is averred that the petitioner worked with utmost honesty and satisfaction and has a meritorious service record. On account of his commendable work, he had been granted out of turn promotions. However, a FIR No. 65 dated 12.4.2021 under Sections 21, 29 and 59 of the NDPS Act 1985 and Section 7 of the Prevention of Corruption Act 1988, read with Section 120-B IPC came to be registered at Police Station Tarn Taran against the petitioner. In the FIR dated 12.4.2021, which was registered by one SI Jatinder Singh, it was alleged that a secret informer gave him information that on 31.03.2021, the petitioner along with Head Constable Davinder Singh caught Malkeet Singh @ Patla and Bao Singh with 1 Kg of heroin in the city Tarn Taran. The officials were in a white Brezza car when they apprehended Malkeet Singh with heroin. Thereafter, in connivance with one Jassa Singh, the petitioner along with Head Constable Davinder Singh released Malkeet Singh @ Patla and Bao Singh upon receiving a bribe of ₹3,50,000/-.

The heroin was also taken away. On the registration of the FIR, the Deputy Inspector General of Police, Ferozepur— respondent No. 3 dismissed the petitioner from service by invoking Article 311 (2) (b) of the Constitution of India, holding that there is no need to hold a departmental inquiry as he has committed a grave misconduct of accepting the bribe and retaining heroin, which act has maligned the police force.

4. The petitioner being aggrieved against the dismissal order on invoking Article 311 (2) (b) of the Constitution of India, has approached this Court by contending that the petitioner was not on patrolling duty on the date of the alleged incident i.e. on 31.03.2021. He was in fact on duty at Police Lines.

5. Mr. Patwalia learned Senior Counsel, assisted by Mr. Kannan Malik, Advocate, appearing on behalf of the petitioner, would contend that registration of the FIR against the petitioner has been made on a statement of a secret informant, which was given after a period of two weeks of the alleged incident in question. The petitioner had applied for anticipatory bail, which was allowed by this Court in **Criminal Misc. M No. 22360 of 2021 titled as ‘Baljit Singh Vs The State of Punjab on 7.6.2021**. It is submitted that the order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. It is pointed out that the petitioner herein was due for promotion and the registration of the FIR on the statement of an unknown person is only to put a hurdle to his promotion which was due. Mr. Patwalia 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 and CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020, 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 evidence available to hold that it would not be practical to hold a departmental inquiry.

6. Whereas, Mr. Sharada learned Senior DAG appearing on behalf of the respondent would submit that the petitioner herein does not hold a good service record, as claimed. In fact, the petitioner was awarded minor punishment on 20 different occasions and his service has been forfeited on a temporary basis. It is contended that the petitioner has been nominated as an accused for accepting the bribe to release Malkeet Singh and Bao Singh, who had been caught with 1 kg of heroin, and the said persons should have been retained in police custody. Even the heroin recovered has been retained by the petitioner. He was found missing from Police Lines on 9.4.2021 and a DDR No 34 dated 9.4.2021 stands registered and his name was recommended for suspension and a departmental inquiry. It is submitted that the matter has been considered by the Superintendent of Police Tarn Taran, who recommended the case for dismissal under Article

311 (2) (b) of the Constitution of India and on his recommendation, the DIG Police Ferozepur Range passed the order dispensing with a regular departmental inquiry.

7. In **CWP No. 25366 of 2021 Surinder Kumar Vs State of Punjab and others**, the petitioner was dismissed from service by invoking Article 311 (2) (b) of the Constitution of India. The petitioner joined the Punjab services on 31.08.1991 as Constable and was promoted as Head Constable in the year 2003 and subsequently promoted as Assistant Sub-Inspector in the year 2014. He was nominated as an accused in FIR No. 009 dated 15.01.2021 under Section 7 of the Prevention of Corruption Act 1988 registered at Police Station Jodhewal, District Police Commissionerate at Ludhiana. On the registration of the FIR, the petitioner was dismissed from service by the order dated 18.01.2021 by invoking the provisions of Article 311 (2) (b) of the Constitution of India. The appeal preferred by the petitioner before respondent No. 2 was dismissed on 19.10.2021, which led to the filing of the instant petition.

8. The arguments as advanced by the learned Senior Counsel in CWP No. 12366 of 2021, stand adopted by the counsel appearing on behalf of the petitioner. Whereas learned State counsel would argue that there is no infirmity in the order passed as the petitioner herein has been nominated in several FIRs and has been punished with forfeiture of 2 years of service for the purposes of increment. He has faced many departmental inquiries during his service and has been given punishment after being found guilty of negligence towards his work. It is submitted that the punishing authority has

come to the conclusion that it is not practical to hold a regular departmental enquiry on account of his criminal activities and his retention in service is detrimental to the interest of the State. It is for this reason he stands dismissed without a departmental inquiry.

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

10. The petitioner (in CWP 12366 of 2021) 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.

11. 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 the petitioner herein is involved in FIR under the NDPS Act and had asked for a bribe of ₹3,50,000/-not to involve Malkeet Singh @ Patla and Bao Singh in the case and had also retained 1 Kg of heroin. His earlier conduct was also taken into account holding that '*keeping such an employee in the police department is against public welfare*'.

12. 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."

13. 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 **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)**.

14. On perusal of impugned orders of dismissal in both the writ petition, 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 *'keeping such an employee in the police department is against public welfare'* (as mentioned in CWP No 12366 of 2021) would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

15. Consequently, both the writ petitions stand allowed and the impugned orders dismissing the petitioners from service vide order dated

30.4.2021 (Annexure P/2 in CWP No. 12366 of 2021) and the order dated 18.1.2021 (Annexure P/2 in CWP No.25366 of 2021) are set aside, leaving it open to the Department to take departmental action in accordance with law.

May 20, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No