

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

CWP No.16148 of 2021 (O&M)

Date of Decision:02.09.2022

Pargat Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ajay Pal Singh, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. By way of instant writ petition under Article 226/227 of the Constitution of India, the petitioner seeks to quash order dated 20.03.2020 (Annexure P/2) by which he stands dismissed from service by respondent No.3 and order dated 16.12.2020 (Annexure P-3) issued by respondent No.2, vide which the appeal filed by the petitioner against the order dated 20.03.2020 stood dismissed.

2. In brief, the facts of the case are that the petitioner was enrolled as a Constable in 13th Battalion of the Punjab Armed Police at Jalandhar on 17.11.1989 and thereafter transferred to 1st Battalion at Bahadurgarh (Patiala). The petitioner was transferred to District Police Cadre in the year 1994 and promoted to the post of Assistant Sub Inspector in 2016. When the petitioner was posted as Assistant Sub Inspector (Local Rank) in excise staff at Amritsar, he was arrested in case FIR No.09 dated 17.03.2020 under Section 7 of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Amritsar wherein it was alleged that petitioner

and his co-accused namely ASI Tilak Singh, Anti Narcotic Cell asked the complainant of the aforesaid FIR to give them bribe, failing which they will show more quantity of contraband from a friend of the complainant namely Gurdit Singh, who was arrested by the Anti Narcotic Cell, Amritsar in FIR No.64 dated 16.03.2020 under Section 22 of the NDPS Act registered at Police Station Maqboolpura, Amritsar. On the basis of the registration of the FIR, the Commissioner of Police, Amritsar—respondent No.3 dismissed the petitioner from service on 20.03.2020, by invoking Article 311 (2) (b) of the Constitution of India holding that the petitioner may threaten the witnesses and influence the regular departmental enquiry and therefore, it is not reasonably practicable to hold any inquiry against the petitioner.

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 has been registered against 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 allegation against the petitioner is of demanding illegal gratification from the complainant in FIR No.09 dated 17.03.2020 while threatening him that if he did not give bribe money, they will show more recovery of contraband from the possession of his friend than actually recovered so that the accused may not be entitled for bail. The petitioner being member of a disciplined force was supposed to discharge his duties diligently and honestly and, 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 registered 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 has to record reasons in writing as to why it is not reasonably practical to hold a departmental inquiry. This reasoning is missing in the impugned order, wherein the only consideration is that “..keeping in view their conduct they may threaten the witnesses and influence the regular departmental enquiry, it will not be reasonably practicable to hold an enquiry into the allegations against the accused LR/ASI Tilak Singh No.723/Amritsar and LR/ASI Pargat Singh No.1756/Amritsar...”

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. 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 *“keeping in view their conduct they may threaten the witnesses and influence the regular departmental enquiry, it will not be reasonably practicable to hold an enquiry into the allegations against the accused LR/ASI Tilak Singh No.723/Amritsar and LR/ASI Pargat Singh No.1756/Amritsar..”*, 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 stand allowed and the impugned order dismissing the petitioner from service vide orders dated 20.03.2020 (Annexure P/2) and 16.12.2020 (Annexure P/3) are set aside, leaving it open to the respondent-State to take departmental action in accordance with law.

September 02, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No