

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

(1) **CWP No. 13973 of 2018 (O&M)**
Date of Decision: 18.5.2022

Balbir Singh and another

...Petitioners

Versus

State of Haryana and another

...Respondents

(2) **CWP No. 14707 of 2018 (O&M)**

Sandeep Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Soni, Advocate
for the petitioners in both the cases.

Mr. Sanjay Mittal, Additional Advocate General, Haryana.

JAISHREE THAKUR, J.

1. By this common judgment, this Court proposes to dispose of above titled two writ petitions since they arise out of the similar set of facts; involving common question of law. In fact, in both the petitions, the petitioners are seeking to challenge the order dated 21.5.2018 (Annexure P/2) passed by the Deputy Commissioner of Police, Headquarters, Gurugram, whereby they have been dismissed from service, by invoking Article 311 (2) (b) of the Constitution of India and dispensing with regular departmental inquiry.

2. The brief facts (as enumerated in CWP No. 13973 of 2018) are

that the petitioners, after serving the Indian Army for about 16 years, joined the Haryana Police in the year 2001 and 2007. It is averred that during their entire service career either in the Army or in the Haryana Police, there was no complaint against them; nor any entry or remark recorded in their character roll or the ACR. It is alleged that on 18.5.2018, a police party led by CHC Balbir Singh—petitioner No.1, Jasbir Singh—petitioner No. 2, Sandeep Kumar (petitioner in CWP 14707 of 2018) and one Rammehar, was detailed to take a convict, namely Rajesh, who was undergoing life imprisonment in Bhondsi Jail, to Maharishi Dayanand University (MDU), Rohtak to enable him appear in the LLB examination. A prison van was detailed to carry this convict as well as other inmates to PGIMS, Rohtak. However, the police party, in connivance with the convict, called someone for a private car. It is alleged that Balbir Singh—petitioner No. 1 had allowed Sandeep to go to his residential house located in District Panipat from Bhondsi Jail itself. On reaching Sohna Road, the petitioners asked Constable Rammehar, who was armed with a carbine to step out from the car and further asked him to return to Police Lines. Thereafter, the petitioners, despite knowing the fact that convict—Rajesh is a dreaded criminal, serving life imprisonment, intentionally left MDU Rohtak, for Bhondsi Jail, without weapon and adequate police escort. While being escorted back to Bhondsi Jail, at 'T' Point, Badshapur, the convict asked the police party to stop enroute to relieve himself. The police party stopped the private vehicle and Jasbir Singh took him out for this purpose. However, the convict, who was handcuffed, escaped from his custody. The police party did not attempt to foil the escape of the convict; nor did they inform

either the police control room or the concerned authority on time so that the accused could have been arrested. Therefore, in view of the gravity of the negligence in the duty, the petitioners were served with the impugned order dated 21.5.2018 passed by the Deputy Commissioner of Police, Headquarters, Gurugram, whereby they were dismissed from service, without issuing any show cause notice and dispensing with a departmental inquiry. The reasoning in the impugned order for dispensing with the regular departmental inquiry is “...*the police personnel has good relations with the dreaded criminal, so it would not be feasible to get a regular departmental inquiry done in respect of this episode because nobody will come forward to depose the incident under the fear of dreaded convict and police personnel involved....*”

3. The facts in CWP No. 14707 of 2018 are not different, except the petitioner joined the Haryana Police on 4.12.2013 and he had about four years of service to his credit and there have been no complaints whatsoever against him during the aforesaid period.

4. Learned counsel appearing on behalf of the petitioners, would contend that the impugned order has been passed in complete violation of principle of natural justice as neither any opportunity of hearing was given nor any show cause notice regarding proposed punishment was given to them. It is submitted that the impugned order has been passed in violations of the Punjab Police Rules, 1934 (as applicable to the State of Haryana), as under Rule 16.2 of the 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 the petitioners, under the bonafide faith and on instructions of one Rakesh Kumar, (who is DSP in District Jail, Jind, and none else but the brother of escaped prisoner Rajesh Kumar), that they took the convict in a private vehicle arranged by the said senior officer, for appearing in LLB examination. It is submitted that the mistake committed by the petitioners in taking the convict in a private car was a bonafide one, but the punishment awarded to them is not in commensurate with the alleged act or conduct of the petitioners. 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 material available to hold that it would not be practicable to hold a departmental inquiry.

5. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioners herein do not hold a good service record, as claimed. In fact, ACR of petitioner No.1 for the period 9.10.2013 to 13.1.2014 has been reported adverse, which was conveyed to him and even his representation against the said adverse report has been rejected vide letter dated 23.5.2015. Similarly, petitioner No.2 was awarded punishment of stoppage of two future increments with temporary effect vide

order dated 21.10.2010. It is submitted that if the police party had been properly armed, the convict could not have escaped. It is also submitted that the instant petition is premature as the petitioners have not exhausted departmental remedy available to them. As per Rule 16.29 of the Punjab Police Rules, the petitioners were required to file an appeal before the Appellate Authority i.e. Commissioner of Police, Gurugram and further as per Rule 16.32 of the Rules, a revision petition to the Director General of Police Haryana would lie. It is also submitted that the petitioners committed a grave misconduct by taking the convict in a private car, despite a prison van was detailed to carry this convict as well as other inmates to PGIMS Rohtak.

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

7. The allegations against the petitioners are that they took the convict Rajesh from Bhondsi Jail, Gurugram to Maharishi Dayanand University (Rohtak) for getting him appear in the LLB examination in a private vehicle and that too provided by none else but the brother of the said convict Rajesh, who is stated to be posted as DSP in the District Jail, Jind. It is alleged that though a prison van was detailed for the aforesaid purpose, yet due to the petitioner's nexus with the convict and his brother, they took the convict in a private car, who managed to escape from their custody. Another allegation against petitioner No.1, who was leading the Police Party, is that firstly he allowed Constable Sandeep Kumar to visit his residential house located in District Panipat from Bhondsi Jail itself and also asked Constable Rammehar, who was armed with a carbine to step out

from the car and return to the Police Line. The petitioners stand dismissed from service for their aforesaid act and conduct. Their 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.”

8. 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 only consideration is that the petitioners had good relations with dreaded criminals so it would not be feasible to hold a regular departmental inquiry. In this way, the above the petitioners have proved themselves to be dark sheep in the Police Force and exhibited their absolute disability in the Police Department and, therefore, they are liable to be punished severely.

9. 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."

10. 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**

11. 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 titled Baljit Singh Versus State of Punjab and others decided on 20.5.2022**) or that they have nexus with a dreaded criminal, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee. The apparent dreaded criminal is none other than the brother of a police officer. Moreover, it would also be pertinent to note that in the FIR pending, the police official would themselves be witness and the same witness in all probability would depose in the departmental inquiry.

12. Consequently, both the writ petitions stand allowed and the

impugned orders dismissing the petitioners from service vide order dated 21.5.2018 (Annexure P/2 in both the writ petition) are set aside, leaving it open to the Department to take departmental action in accordance with law.

18.5.2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No