

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 22348 of 2021 (O&M)
Date of Decision: 26.7.2022

Gurpreet Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhimanyu Tewari, Advocate with
Ms. Dilmrig Nayani, Advocate,
for the petitioners.

Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. By way of instant writ petition under Articles 226/227 of the Constitution of India, the petitioners seek to quash order dated 19.10.2019 (Annexure P/2) by which they stand dismissed from service by respondent No. 2 and orders dated 3.11.2020 and 10.11.2020 (Annexures P/3 and P/4 respectively), vide which the appeals filed by the petitioners against the order dated 19.10.2019 were dismissed.

2. In brief, the facts of the case are that an FIR No. 108 dated 19.10.2019 under Sections 20, 21, 27 and 29 of the NDPS Act, 1985 was registered against against the petitioners, while they were posted as Head Constables in Commissionerate Ludhiana. The FIR was registered on the basis of a secret information and the petitioners were apprehended and 12 grams heroine and 10 grams of charas was allegedly recovered from their

possession. It was also alleged that the petitioners were indulging in illegal narco trade activities. On the basis of the registration of the FIR, the Commissioner of Police, Ludhiana—respondent No. 2 dismissed the petitioners from service on 19.10.2019, by invoking Article 311 (2) (b) of the Constitution of India and Rule 16.2 (1) of the Punjab Police Rules, 1934 holding that their retention and continuation in service may be detrimental to the interest of the State as well as the general public. Therefore, it was held that it is not reasonably practicable to hold any inquiry against them.

3. Learned counsel appearing on behalf of the petitioners would contend that the petitioners have clean service record and they never involved in any illegal activities during their service career. A false and frivolous FIR was registered against them. 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 the petitioners herein had been indulging in illegal narco trade activities by misusing their official position. The petitioners being member of a disciplined force were supposed to take strict action against the people involved in smuggling/selling of drugs. However, instead they themselves were indulging in illegal narco trade activities and, therefore, the petitioners were 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 petitioners stand dismissed from service by taking into account the FIR that has been filed against them. 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. 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, wherein the only consideration is that *“their retention and continuation in service may be detrimental to the interest of the state as well as the general public...”*

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 "*their retention and continuation in service may be detrimental to the interest of the state as well as the general public.*", 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 petitioners from service vide order dated 19.10.2019 (Annexure P/2) is set aside, leaving it open to the Department to take departmental action in accordance with law.

26.7.2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No