

[101] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21419 of 2020
Date of decision : 23.02.2022

Bikramjit and another ...Petitioners

Versus

State of Punjab and Ors.Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Adityajit Singh Chadha, Advocate for the petitioners.
Mr. Ayush Sarna, AAG, Punjab.

B.S. Walia, J.

[1] Prayer in the petition under Article 226 / 227 of the Constitution of India is for the issuance of a writ, order or direction especially in the nature of certiorari for quashing orders, Annexures P/5 and P/6 dated 15.09.2020 passed by respondent No.3 dismissing the petitioners from service as also orders Annexures P/9 and P/10 dated 03.11.2020 passed by respondent No. 2 dismissing the appeals filed by the petitioners.

[2] Brief facts of the case leading to the filing of the instant petition are that the petitioners joined Punjab Police as Constables on 01.01.1994 and 01.01.1993 respectively whereafter they were promoted as Head Constables w.e.f. 22.07.2005 and 01.05.2013 respectively. Subsequently, the petitioners were given charge of ASI (Local Rank) vide orders, Annexures P/1 and P/2 dated 14.03.2018 and 13.02.2020 respectively and on 25.08.2020, petitioner No.1 i.e. Bikramjit Singh along with police patrolling party while going to village Mithumajra saw a person with his face covered with a mask coming

AMIT KHANCHI on a motorcycle. On seeing the police party, said person tried to run away,
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I attest to the accuracy and
authenticity of this order

whereupon members of the police party including petitioner No.1 nabbed said person who revealed his name as Didar Singh. Search of said person by a Gazetted Officer lead to recovery of 3 kgs of opium whereupon FIR No. 0168 dated 25.08.2020 (Annexure P/3) was registered against Didar Singh u/s 18, Narcotic Drugs and Psychotropic Substances Act, 1985.

[3] Learned counsel contends that during investigation of FIR No. 0168 dated 25.08.2020, the Investigating Officer directed petitioner No. 1 to join one Angrej Singh in investigation and during investigation at Police Post, Bahadurgarh petitioner No.1 came to know that Angrej Singh who was brother of one Amrik Singh had made numerous calls to Didar Singh from whose possession, 3 kgs of opium was recovered. In the aforementioned circumstances, being wary of implication in the case on account of their nexus with drug cartels operating in the State of Punjab, Amrik Singh registered FIR No.10 dated 12.09.2020 under Section 7, Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, FS-1, Punjab, Mohali against the petitioners to divert attention of the police.

[4] Learned counsel contends that as per the FIR registered by Amrik Singh, the petitioners had asked him for Rs.1 lakh to save his brother Angrej Singh from implication in FIR No. 0168 of 2020 and had told him to come to the Police Post on 09.09.2020 to negotiate the bribe amount which was settled at Rs.25,000/- and on the basis of said complaint, the Vigilance Bureau, registered FIR No.10 dated 12.09.2020 under Section 7, Prevention of Corruption Act, 1988 against the petitioners without verifying the allegations, whereafter a Police team raided the premises of Police Post Bahadurgarh on 12.09.2020 where the petitioners were posted and even

though the raiding team did not find any incriminating evidence against the petitioners, yet took the petitioners into custody.

[5] Learned counsel contends that while the petitioners were in custody, respondent No.3 in a completely arbitrary and illegal manner, without issuing any show cause notice or granting any opportunity of hearing and in complete contravention of Article 311 (2) of the Constitution of India, dismissed the petitioners from service vide orders, Annexures P/5 and P/6 dated 15.09.2020.

[6] Learned counsel contends that a perusal of the impugned orders, reveals that the only reasons given by respondent No.3 for dispensing with the regular departmental enquiry was that no witness would come forward to give a statement against the petitioners. Learned counsel contends that the same cannot under any circumstances be considered as a reasonable ground for dispensing with the enquiry as respondent No.3 failed to mention any cogent reason which would prevent a prospective witness from coming forward to give evidence against the petitioners. Learned counsel contends that it is settled law that a regular departmental enquiry could be dispensed with only in exceptional circumstances e.g. where the officer / official against whom action was proposed to be taken is so powerful that a normal citizen would not depose against said officer / official.

[7] Learned counsel contends that aggrieved against the dismissal orders, the petitioners preferred an appeal before respondent No.2 but surprisingly, respondent No.2 in a completely illegal and arbitrary manner passed order Annexures P/9 & P/10 dated 03.11.2020, dismissed the appeal filed by the petitioners without applying mind to the points raised on the

same reasoning on which impugned orders, Annexures P/5 and P/6 had been passed. Learned counsel contends that it is settled law that the powers under Article 311 (2) (b) of the Constitution of India can be exercised only in extra-ordinary circumstances and that while dispensing with an enquiry under Article 311 (2) (b) of the Constitution of India, the competent authority is required to record reasons as to why it is not reasonably practicable to hold an enquiry against the delinquent officer whereas perusal of the impugned orders, failed to reveal any cogent justification by respondent No. 3 for dispensing with the regular enquiry and invoking the provisions under Article 311 (2)(b) of the Constitution of India and that in the circumstances, mere registration of an FIR or the specious ground that no person would come forward to depose against the petitioners was no ground for dispensing with the enquiry.

[8] Learned counsel relies on the decision of Hon'ble the Supreme Court in Sudesh Kumar Vs State of Haryana, 2005 (11) SCC 525, Reena Rani vs. State of Haryana and Others-CA No.2761 of 2012 arising out of SLP (C) 7701 of 2011, decision of the coordinate bench of this Court in CWP No.13847 of 1995 in case titled as Harinder Kumar vs. State of Punjab and another as well as CWP No.15903 of 2014 in case titled as Dinesh Singh vs. State of Punjab and others besides the Division Bench decision of Hon'ble the Delhi High Court in Commissioner of Police and Others vs. Ashwani Kumar and Others, WP (C) No.4078 of 2017 and CM application No.17906 of 2017.

[9] Reply has been filed by Shri Gurdev Singh Dhaliwal, PPS, Deputy Superintendent of Police (Headquarters), Patiala on behalf of respondent Nos.1 to 3. A perusal of the reply reveals that the petitioners

were arrested on a raid conducted at Police Post Bahadurgarh for accepting bribe of Rs.25,000/- and while recording that said action of the petitioners had defamed the police department in the eyes of the general public, consequentially it was not conducive to retain them in the Police Force nor practicable to hold a departmental enquiry as no one would come forward to depose against the petitioners, the Senior Superintendent of Police (Investigation), Patiala in exercise of powers under Article 311 (2) of the Constitution of India, Section 7 of the Police Act, 1861 and Rule 16.1 of the Punjab Police Rules, 1934, ordered dismissal of the petitioners from the Police Department vide orders, Annexures P/5 and P/6 dated 15.09.2020 respectively. Appeal filed by the petitioners before the Inspector General of Police, Patiala Range, Patiala (respondent No.2 herein) against orders, Annexures P/5 and P/6 was dismissed vide orders Annexures P/9 & P/10 dated 03.11.2020. Contents of the reply are reiterated by the learned AAG who contends that the enquiry was dispensed with as the disciplinary authority was of the view that no one would come forward to give evidence.

[10] I have heard learned counsel, considered their submissions and also perused the pleadings.

[11] A perusal of order, Annexure P/5 & P/6 reveals that the competent authority took into account that the Vigilance Team registered FIR No.10 dated 12.09.2020 at Police Station Phase I, Mohali, Punjab and arrested the petitioners under Section 7 of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018 on the basis of complaint, for taking bribe of Rs.25,000/- that the petitioners, being officers of a disciplined service as also aware of the resolve of the Government of Punjab to eliminate drugs, by demanding bribe committed

gross violation of the Rules, besides tarnished the image of the Police Department, and in the circumstances, it was not in public interest to retain the petitioners in the force nor would initiation of departmental enquiry be appropriate because no person would be ready to give evidence against the petitioners, therefore, the Superintendent of Police (Investigation), Patiala, recommended their dismissal in exercise of the powers under Article 311 (2) (b) of the Constitution of India.

[12] It needs noticing here that perusal of Annexure P/7 reveals that on conduct of raid, the accused were made to wash their hands in a mixture of P-powder which turned light pink and although the currency notes were not recovered from them, ASI Sohan Singh disclosed that he had handed over currency notes of Rs.25,000/- to Surjit Singh of M/s O.K. Watch Company outside the police post, whereupon currency notes were recovered from M/s Taman Telecom at the instance of said Surjit Singh leading to both petitioners / accused being taken in custody on 12.09.2020 itself.

[13] In **Sudesh Kumar's case (Supra)** the impugned order was set aside by holding that inquiry under Article 311 (2) (b) of the Constitution of India was a rule while dispensing with the same an exception, besides, the authority dispensing with the inquiry under Article 311(2)(b) was required to be satisfied for reasons to be recorded that it was not reasonably practicable to hold the inquiry. Relevant extract of the judgment is reproduced as under :-

“11. *It is now established principle of law that an inquiry under Article 311 (2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably*

practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2) (b), as extracted above, would clearly show that no reasons whatsoever have been as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order is that the complainant refused to name the accused out of fear of harassment the being a foreign national is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand it is not disputed that by order dated 23 December 1999, the Visa of the complainant was extended upto 22nd December 2001. Therefore, there was no difficulty in securing the presence of Mr Kenichi Tanaka in the inquiry.

12. *A reasonable opportunity of hearing enshrined in Article 311(2) (b) of the Constitution of India would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case the mandate of Article 311 (2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.”*

[14] In **Reena Rani’s case (Supra)**, Hon’ble the Supreme Court held that the reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso of Article 311 (2). Relevant extract of the same is reproduced as under :-

“8.The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the Appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the Appellant.

10. In Union of India v. Tulsiram Patel (supra) the Constitution Bench considered the scope of Clauses (a), (b) and (c) of the second proviso to Article 311. While dealing with Clause (b), Madon, J., who spoke for the majority of the Constitution Bench observed:

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or

not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the Government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the Government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned Government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article

311 makes the decision of the disciplinary authority on this question final. 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. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

133. *The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.*

134. *It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing*

the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances. ”

[15] In **Harinder Kumar’s case (Supra)** the delinquent was dismissed from service on mere registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 against him 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 and further that it was not reasonably practicable to hold a departmental enquiry under the Punjab Police Rule 16.24 against him as in such departmental enquiry, if instituted, the pick-pockets and chain-snatchers were not likely to depose against him on account of their links with him. The writ petition was allowed by holding that :

“11. Merely because Senior Superintendent of Police, Sangrur formed an opinion that if departmental enquiry was instituted, associates of the petitioner, who were also

cited as an accused in the FIRs, were not likely to depose against him, was not enough”.

[16] In **Ashwani Kumar’s case (Supra)** the reasons for dispensing with the enquiry i.e. that holding of enquiry would only be to the advantage of the members of the Escort Guard as the probability to manage the evidence and witnesses in their favour at later stage could not be ruled out besides the media was also not likely to support the misdemeanour of the police officers in the enquiry as also the belief that witnesses would either not join the enquiry or they would not depose against police officials as well as High Risk UTP Manoj Bakarwala, a hard core notorious criminal, who had a history of involvement in 73 criminal cases, was rejected. Relevant extract of the same is reproduced as under:-

“7. According to Mr. Satyakam the above reason is contained in the notings in file as well. The mandate of the law is clear that before dispensing with an enquiry, a subjective satisfaction is to be arrived at by the Disciplinary Authority („DA”) that it is not reasonably practicable to hold a regular departmental enquiry. These reasons must be based on an objective criterion and not on the whims and fancies of the DA. In other words, it cannot be based on surmises and conjectures, but must reflect the actual ground reality, which makes it impossible for the DA to order a regular departmental enquiry.

8. In the present case, with the Petitioners being in possession of a video footage, as aired on the television, of the actual incident involving the Respondents, there should be no difficulty in holding a regular enquiry where that evidence is not only presented, but also provided to the Respondents for them to defend

themselves. Without there being any effort made to record statements of public witnesses, or of media persons, the DA could not have come to a conclusion that the Respondents would have been able to "manage the evidence and witnesses in their favour at a later stage" or that the media would not cooperate in the inquiry. Without making the slightest effort of investigating into the matter further, to have taken a decision not to hold an enquiry, and to proceeding to remove the Respondents from service appears to this Court to be a decision unsustainable in law.

[17] In **Dinesh Singh's case (Supra)** action of the authority in dispensing with the enquiry under Article 311 (2) (b) of the Constitution of India was set aside while observing that it was a settled proposition of law that due reasons were necessarily required to be recorded as to why it was not practicably possible to conduct an inquiry or how it was not convenient to the respondent-authority or the inquiry officer to conduct an inquiry and that absence of extraordinary circumstances while invoking provisions of Article 311 (2) (b) could be termed as misuse of power and the resultant impugned action unsustainable. Relevant extract of the same is reproduced as under :-

"The extraordinary powers provided under Article 311 (2) (b) have been invoked but the essential requirements of the Article qua the recording of reasons for invoking said provisions have not been complied with. Simply stating that the petitioner has consumed psychotropic substance is not sufficient. It is a well settled proposition of law that due reasons are necessary to be required to be recorded as to why it was not practicably possible to conduct an inquiry or how it was not convenient to the respondent-authority or the inquiry

officer to conduct an inquiry. Said provisions are attracted by exercising extraordinary powers under the extraordinary circumstances. The absence of extraordinary circumstances while invoking provisions of Article 311 (2) (b) can be termed as misuse of power and as such the action of the respondents is not sustainable in the eyes of law.

[18] A perusal of the judgments referred to above reveals that it is settled law that holding of inquiry under Article 311 (2) (b) of the Constitution of India is a rule while dispensing with the same an exception. Merely recording that if enquiry was held nobody was likely to come forward to depose is not enough. The reasons recorded for dispensing with the enquiry i.e. of witnesses not likely to come forward to depose against the accused, in the facts and circumstances of the case does not bring the dispensing of conduct of enquiry within the ambit of exception, no material has been referred to, to show that the holding of the inquiry is not reasonably practicable, particularly in view of the Investigating Authority being in possession of material as is evident from Annexure P/7 of hands of the petitioners having turned light pink on the same being washed in mixture of 'P'- powder besides disclosure having been made by petitioner No.2 of his having handed over currency notes of Rs.25,000/- to Surjit Singh of M/s O.K. Watch Company outside the police post, whereafter said currency notes were recovered from M/s Taman Telecom at the instance of said Surjit Singh leading to both the petitioners being taken into custody on 12.09.2020. In the circumstances, there appears to be no difficulty in holding a regular enquiry where not only can evidence be led against the accused but they can also be provided opportunity to defend themselves. Nothing has been

pointed out nor has any record been shown qua any material suggesting that it would not be reasonably practicable to hold an enquiry. In the circumstances, mere recording by the Senior Superintendent of Police (Investigation), Patiala that no witness will come forward for giving statement against the petitioners is unsustainable. Consequentially, the impugned orders of the disciplinary authority as well as the Appellate Authority, dispensing with the enquiry / rejecting the challenge to dispensation of enquiry are unsustainable.

[19] Accordingly, impugned orders i.e. Annexures P/5 and P/6 dated 15.09.2020 passed by respondent No.3 dismissing the petitioners from service as well as orders Annexures P/9 and P/10 dated 03.11.2020 passed by respondent No. 2 dismissing the appeals are set aside. However, the respondents are at liberty, if so advised, to hold a regular departmental enquiry against the petitioners by affording them opportunity of hearing and thereafter pass orders in accordance with law. Writ Petition disposed of in the aforementioned terms.

(B.S. Walia)
Judge

23.02.2022

Amit

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| 1. | <i>Whether speaking/reasoned:</i> | <i>Yes/No.</i> |
| 2. | <i>Whether reportable :</i> | <i>Yes/No.</i> |