

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

CWP No.22386 of 2021 (O&M)

Date of Decision:02.09.2022

Bittu

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Suresh Kumar Redhu, Advocate,
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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 13.10.2021 (Annexure P/2) by which he stands dismissed from service by respondent No.4 without holding regular departmental enquiry.

2. In brief, the facts of the case are that the petitioner was inducted in the Haryana Police Department on 17.07.2012. The petitioner was implicated in case FIR No.377 dated 02.09.2021 under Sections 419 and 120B IPC registered at Police Station Madhuban, Karnal on the allegations that he got appeared Head Constable Yogender Singh No.4/62 IRB in his place in B-1 test of 2019 conducted on 17.07.2021 at Lab No.3 from 7PM to 8.30PM of HPA, Madhuban. On the basis of the registration of the FIR, the Superintendent of Police, Railways Haryana, Ambala Cantt.— respondent No.4 dismissed the petitioner from service on 13.10.2021, by invoking Article 311 (2) (b) of the Constitution of India holding that the petitioner has tarnished the image of the police department being member of

a disciplined force and the circumstances do not mandate any departmental enquiry to be conducted for such aforesaid grave misconduct.

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 **Jaswant Singh vs. State of Punjab and others 1991 (1) SCT 125; Ex. Constable Balwinder Singh Vs. State of Punjab 1996 (1) SCT 131; Ramesh Chand Vs. State of Punjab and others 2013 (4) SCT 830 and Kabal Singh Vs. State of Punjab 2016 (2) SCT 705**, 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 urge that the petitioner had got some one to impersonate him and take his examination. There is evidence to that effect. A preliminary enquiry was conducted, pursuant to which FIR was registered against the petitioner, it was on the basis of this finding/report that order of dismissal from service was passed by invoking Article 311(2) (b) of the Constitution of India. It is further contended that the petitioner herein had been arrested on 09.10.2021 and therefore, it would not have been possible

to conduct a regular departmental enquiry against him by invoking Rule 16.24 of the Punjab Police Rules, 1934, as applicable to Haryana.

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 *“He has tarnished the image of police department being member of a disciplined force. The circumstances do not mandate any departmental enquiry to be conducted for such aforesaid grave misconduct..”*

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. The argument of the respondent-State that it was on the finding rendered in the preliminary inquiry, the impugned order has been passed is not sustainable

in the light of the fact that the preliminary inquiry does not opine or hold that it is not possible to hold a departmental inquiry. The report of the preliminary inquiry would only reflect that it was decided to place the petitioner under suspension and an FIR be registered. The impugned order (Annexure P-2), which has invoked Article 311(2) (b) of the Constitution of India while dismissing the petitioner from service is silent either to any opinion given in the preliminary inquiry as argued by the counsel for the respondent-State or any such consideration taken therein.

10. 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)**.

11. 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 *“He has tarnished the image of police department being member of a disciplined force. The circumstances do not mandate any departmental enquiry to be conducted for such aforesaid grave misconduct..”*, would not satisfy the stringent

conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

12. Consequently, the writ petition stands allowed and the impugned order dismissing the petitioner from service vide order 13.10.2021 (P-2) is set aside, leaving it open to the respondent-State to take departmental action against the petitioner in accordance with law.

September 02, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No