

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 23836 of 2021 (O&M)
Date of Decison: 25.5.2022

Surinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. RS Bajaj, Advocate,
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

CM No. 7830-CWP-2022 in
CWP No. 23836 of 2021

CM is allowed. Rejoinder to the written statement along with
Annexure P/15, is taken on record.

Main case

1. By way of instant writ petition under Articles 226/227 of the
Constitution of India, the petitioner seeks to quash order dated 9.11.2021
(Annexure P/11) passed by respondent No.4, by which the petitioner has
been dismissed from service, being illegal and arbitrary.

2. In brief, the facts of the case are that the petitioner joined the
Police Department as Constable on 7.11.1989 and promoted as Head
Constable in the year 2006. On 8.7.2020, the petitioner, when he was posted

in Police Station Sahnewal, District Ludhiana, registered a case against one Sanjay Upadhyia under Section 61 of the Excise Act. It is alleged that said Sanjay Upadhyia was having close link with Inspector Inderjeet Singh, SHO, Police Station Sahnewal, who in turn had good relations with Mr. Jashandeep Singh Gill, ACP South, Commissionerate, Ludhiana—respondent No.5 and therefore, they wanted to save the skin of said Sanjay Upadhyia. Accordingly, Inspector Inderjeet Singh registered an absolutely false and frivolous FIR No. 140 dated 17.7.2020 under Sections 7, 13 (2) of Prevention of Corruption Act, Section 20 of the NDPS Act and Section 61 of the Excise Act, alleging that in fact 500 grams of Ganja was recovered from Sanjay Upadhyia but the petitioner after taking a bribe of ₹40,000/- from him has shown a recovery of 12 bottles of illegal liquor of local brand instead of Ganja. During investigation of FIR No. 140, 500 grams of Ganja, ₹18,500/- bribe money and one box (containing 12 bottles) of illegal liquor were allegedly recovered from the petitioner. After completion of the investigation, challan was presented in the court and charges had been framed against the petitioner. On account of registration of the said case, Ms. Ashwani Gotial, IPC ADC Police (HQ & Security), Ludhiana, was directed to initiate departmental inquiry against the petitioner. When the inquiry was underway, in the meantime, the Director General of Police, Punjab, Chandigarh, issued letter dated 27.10.2020 stating *“that in most heinous offences which may include heavy recoveries under the NDPS Act, trap cases under the PC Act, heinous offences like murder, rape etc. offences involving moral turpitude, the Head of Police Office should examine each cases with an independent mind to establish whether it is*

reasonably practicable to hold an inquiry as refereed in Clause (2) of the Article 311 of the Constitution, and if a conclusion is reached that it is not practicable to hold inquiry under Article 311, the police officer should be dismissed from service by invoking provisions of Article 311...” Therefore, the Senior Superintendent of Police, Khanna, while taking into account the aforesaid letter, and on account of the charges having been framed against the petitioner in FIR No. 140 dated 17.7.2020 under Sections 7, 13 (2) of Prevention of Corruption Act, Section 20 of the NDPS Act and Section 61 of the Excise Act, dismissed the petitioner from service.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has clean service record and he had about 28 years of service to his credit and he was never involved in any illegal activities during his service career. A false and frivolous FIR was registered against the petitioner. It is submitted that when an Inquiry Officer had already been appointed and the inquiry was directed to be conducted on day to day basis, to be completed within two months, it was absolutely unfair and illegal to dismiss the petitioner from service. It is submitted that the fact of the matter is that the petitioner filed a petition under Section 156 (3) of the Code of Criminal Procedure against respondent No.5 and others on 16.12.2020 and on coming to know of this fact, respondent No. 5 got annoyed and started putting pressure upon the petitioner to withdraw the said petition and when the petitioner refused to do so, respondent No.5 openly threatened the petitioner that he should now be ready to face the consequences. It is submitted that during the inquiry, five witnesses had already been examined and on certain vital issues, the said witnesses stated

that it will be replied by the Investigating Officer i.e. respondent No.5, but he did not appear before the Inquiry Officer despite having been granted more than 10 opportunities for the said purpose. It is further submitted that the order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry, which had already been initiated and witnesses examined. 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 even the instructions issued by the Director General of Police dated 27.10.2020 has not been followed in letter and spirit as no cogent reason has been given as to why it is not practicable to hold the inquiry. There has to be some reason given to hold that it would not be practicable to hold a departmental inquiry after it had commenced.

4. Per contra, learned counsel appearing on behalf of the

respondents—State would submit that after registration of the FIR No. 140 against the petitioner, the investigation was conducted by senior police officer, namely Sh. Jashandeep Singh Gill—respondent No.5, who arrested the petitioner on 18.7.2020 and ₹8500/-, out of the bribe money, was recovered from the pocket of the petitioner. During the examination of the petitioner, though the petitioner confessed that Ganja and ₹10,000/- were lying in the almirah of room meant for Investigation Officer at Police Station Kanganwal, but he refused to sign the said confessional statement. Accordingly, the lock of the said almirah was got broken and 500 grams of Ganja and sum of ₹10,000/- were recovered. It is further submitted that in a statement recorded under Section 164 of the Code of Criminal Procedure, Sanjay Upadhaya stated that the petitioner had recovered Ganja from him but after getting the bribe a case under the Excise Act was registered. Accordingly, the said Sanjay Upadhaya was also nominated as an accused in the said FIR on 18.7.2020. It is further submitted that after fair investigation, challan was presented under Section 173 of the Code of Criminal Procedure and charges had been framed against the petitioner on 22.3.2021 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 instructions issued by the Director General of Police, Punjab dated 27.10.2020. The relevant portion of the said instructions reads as under:-

“(i) Examination of the feasibility of dismissal under Article 311 of the Constitution- *In most heinous offences which may include heavy recoveries under the NDPS Act, trap cases under the PC Act, heinous offences like murder, rape etc. offences involving moral turpitude, the Head of Police Office should examine each cases with an independent mind to establish whether it is reasonably practicable to hold an inquiry as refereed in Clause (2) of the Article 311 of the Constitution, and if a conclusion is reached that it is not practicable to hold inquiry under Article 311, the police officer should be dismissed from service by invoking provisions of Article 311. However, this decision should be made by the Appointing/Punishing Authority without prejudice with an open mind with respect to the material before it....”*

7. It appears that the present case is a glaring example of misuse of the power conferred on the authority. In the instant case, an inquiry was already being held, in which five witnesses had been examined and the Investigating Officer—respondent No.5 was to be examined. However, before the inquiry could be concluded, the petitioner was dismissed from service by the impugned order on the basis of the instructions issued by the Director General of Police. It appears that even the instructions as issued by the Director General of Police were not followed in letter and spirit. In the instruction so issued, it has been specifically mentioned that each case has to be examined with an independent mind and to record whether it is reasonably practicable to hold an inquiry as referred in Clause (2) of the Article 311 of the Constitution. However, the impugned order is lacking in so far as there is no apparent reason given as to why it is not practicable to hold an inquiry. In fact, the inquiry was already underway and no reason,

much less cogent reason is coming forth as to why the departmental inquiry could not be concluded.

8. It is settled law that mere registration of an FIR would not be sufficient ground to dispense with the 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)**.

9. 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 *“as per instructions issued by worth Director General of Police Punjab, Chandigarh vide office letter No. 17194-17293/E-2 (5) dated 27.10.2020, on account of registration of case under NDPS Act, above said official is liable to be dismissed from police department. After considering the said facts, I have*

come to the conclusion that on account of charge having been framed against him in FIR No. 140 dated 17.7.2020 under Sections 7/13 (2) of P.C. Act, 20/61/85 of NDPS act, 61/1/14 of Excise Act, P.S. Sahnewal, Distt. Ludhiana, Hav. (PR) Surinder Kumar No. 18/Ldh (now 753/Khanna) is hereby dismissed from service....; would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

10. Consequently, the writ petition stand allowed and the impugned order dismissing the petitioner from service vide order dated 9.11.2021 (Annexure P/11) is set aside, leaving it open to the Department to take departmental action in accordance with law.

May 25, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No