

In the High Court for the States of Punjab and Haryana at Chandigarh

CWP-13585-2019 (O&M)
Date of Decision:-19.10.2023

Ex. Head Constable Balwinder SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.K. Arya, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

* * * * *

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner, who had been serving as Head Constable in Punjab Police, and was dismissed from service vide impugned order dated 11.8.2018 (Annexure P-1) passed by respondent No.4 – The Senior Superintendent of Police, Tarn Taran, assails the said order.
2. Learned counsel representing the petitioner submitted that the petitioner had put in more than 26 years of service with Punjab Police but his services have been terminated without holding any departmental inquiry by invoking provisions of Article 311 (b) (2) of Constitution of India on the ground that the petitioner was involved in FIR No.15, dated 10.8.2018 registered at Police Station Vigilance Bureau Range, Amritsar, under Sections 7, 13(2) of Prevention of Corruption Act and Section 120-B of Indian Penal Code.

3. Learned counsel for the petitioner submitted that there is nothing on record to justify dispensation of inquiry inasmuch no reason has been recorded in the impugned order or in any other order to show as to how it was impracticable to hold any inquiry. It has been submitted that the petitioner otherwise also stands acquitted in the trial arising out of FIR No.15, dated 10.8.2018 vide judgment dated 2.4.2022 (Annexure P-5) passed by learned Additional Sessions Judge, Tarn Taran.
4. Learned counsel for the petitioner has further submitted that two other police officials, who were also co-accused against whom also dismissal orders had been passed, have since been reinstated after withdrawal of the orders of termination and that, in these circumstances, the petitioner also deserves the similar relief. Learned counsel representing the petitioner, in order to hammer forth his aforesaid submissions, places reliance upon judgments passed by Hon'ble the Supreme Court rendered in (2014)13 SCC 244 Risal Singh vs. State of Haryana and Reena Rani v. State of Haryana, (2012) 10 SCC 215.
5. Opposing the petition, learned State counsel has submitted that since it is a case where serious allegations have been levelled against the accused and that it is the petitioner, who had allegedly caught red-handed while accepting the tainted currency notes, his case would be distinguishable from the case of other two co-accused. It has further been submitted that even in the orders of withdrawal of termination orders qua the other two co-accused, the department has reserved its right to initiate the fresh inquiry. Learned State counsel, however, could not show as to whether any other separate order recording reasons for dispensation of the departmental inquiry has been passed.

6. This Court has considered rival submissions addressed before this Court.
7. Since it is a case where services of the petitioner have been terminated, admittedly without holding any inquiry, it is apposite to refer to the relevant provisions providing for dispensation of an inquiry. Article 311 of Constitution of India reads hereinunder:

“Article 311, Constitution of India 1950

- (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:
Provided 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;
 - (b) where an 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 give to that person an opportunity of showing cause; or
 - (c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.
- (3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.”

8. A perusal of Article 311 of Constitution of India would indicate that it is only under a few specified circumstances that inquiry may be dispensed with, which are either on account of conviction of an official or on account of it being impracticable to hold an inquiry or where the President or the Governor

is satisfied that it is not in the interest of security of the State to hold such an inquiry.

9. The relevant extract from the impugned order of termination, which contains the reasons for dispensation of inquiry, is reproduced hereinunder:

“.....Constable/P Balwinder Singh No.428/Tarn-Taran, Head Constable/P. Rashal Singh No.199/Tarn-Taran and Constable Gurwinder Singh No.617/Tarn-Taran being a responsible police employee and knowing to the law committed the above said offence and have been spoiled the image of police in the eyes of general public. For conducting Departmental inquiry is not appropriate against these persons as per Police Rules 16.24 of Punjab Police Rules 1934, because none of the person with their fear ready to record their statements in Departmental Inquiry against them in their presence. In view the offence/allegation and keeping Article 311(2) (b) of Constitution of India, the departmental inquiry is not appropriate against these persons, and it is not appropriate to keep these employees on duty for more time in the interest of public.....”

10. The only circumstance in the present case could be said to be against the petitioner is that the petitioner has been involved in FIR No.15, dated 10.8.2018, although he stands acquitted in the trial arising out of aforesaid FIR vide judgment dated 2.4.2022 (Annexure P-5) passed by learned Additional Sessions Judge, Tarn Taran. The said fact by itself would not be sufficient to dispense with holding of an inquiry before dismissing an employee from service. The impugned order merely states that it is not in public interest to retain the petitioner in service without delineating on any reason for dispensation with holding of an inquiry. This Court in 2014(6) SLR 155 in Constable Harinder Kumar vs. State of Punjab, where the delinquent was dismissed from service without holding any inquiry, pursuant to registration of two FIRs, one under Section 401 IPC and the other under

Section 25 of Arms Act, 1959, on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, held that mere registration of FIR is not valid ground to dispense with holding a regular inquiry. Even in a subsequent case 2022(4) PLR 603 Surinder Kumar vs. State of Punjab, this Court held 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.

11. Punishing authority statutorily as also on the pedestal of principles of natural justice is bound to follow cardinal principles of natural justice which cannot be dispensed with merely on one pretext or the other. It cannot be lost sight of the fact that when right of defending himself in a departmental enquiry is lost to a delinquent, duty of the punishing authority becomes even further onerous to strictly follow the legal mandate while justifying dispensing with regular departmental enquiry.
12. Hon'ble Supreme Court in (2014)13 SCC 244 Risal Singh vs. State of Haryana, while relying upon an earlier judgement rendered in Union of India and Anr. v. Tulsiram Patel, (1985) 3 SCC 398, held as under:

“6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in ***Union of India and Anr. v. Tulsiram Patel, (1985) 3 SCC 398*** is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article [311](#)(2)(b), has ruled thus:

‘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.' ”

13. Hon’ble Apex Court in another case, Jaswant Singh v. State of Punjab and Others, (1991) 1 SCC 362, while dealing with the exercise of power as conferred by way of exception under Article [311\(2\)\(b\)](#) of the Constitution, opined as follows:

"Clause (b) of the second proviso to Article 311(2) 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 enquiry. This is clear from the following observation at page 270 of Tulsiram case: (SCC p.504, para 130)

‘ 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 decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.”

14. In yet another case Reena Rani v. State of Haryana, (2012) 10 SCC 215, Hon’ble Supreme Court after referring to a catena of judgements, held that when reasons justifying dispensation of inquiry are not forthcoming, the order is vitiated and accordingly set aside the order of dismissal.

15. As already discussed above, no such circumstances can be discerned from the facts which could justify dispensation of holding of any inquiry before dismissing the petitioner from service. Testing the instant case on the touchstone of the aforesaid authorities, the irresistible conclusion is that the impugned order passed by respondent No.4 – The Senior Superintendent of Police, Tarn Taran dismissing the petitioner from service while dispensing with the inquiry is totally unsustainable.
16. Consequently, the petition merits acceptance and is hereby accepted. The impugned order dismissing the petitioner from service is set aside with the direction that the petitioner be reinstated in service and be given all consequential benefits, as may be admissible.
17. However, it is made clear that this order shall not preclude the competent authority from taking action against the appellant in accordance with law.

19.10.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No