

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

**CWP No.14107 of 2020 (O&M)
Date of decision : 11.01.2023**

Kuldeep Singh Petitioner

versus

The State of Punjab & ors. Respondents

CWP No.14055 of 2020 (O&M)

Sawinder Singh Petitioner

versus

The State of Punjab & ors. Respondents

CWP No.14067 of 2020 (O&M)

Nishan Singh Petitioner

versus

The State of Punjab & ors. Respondents

CWP No.14110 of 2020 (O&M)

Lakhwinder Singh Petitioner

versus

The State of Punjab & ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Anupam Bhardwaj, Advocate
for the petitioner/s.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

Present bunch of four writ petitions involve common question
of law in the back ground of common set of facts and thus they are being

decided by a common order. For convenience the facts are being taken from **CWP No.14107 of 2020** titled as **Kuldeep Singh Vs. State of Punjab & ors.**

Petitioner was a member of raiding police party in FIR No.64 dated 10.09.2019 registered for offences punishable under Sections 21/29/61/85 of the NDPS Act at Police Station Kacha Pacca. He was ordered to be dismissed from services invoking provisions of Article 311 [2] [b] of the Constitution of India by dispensing the enquiry. The order reads as under :-

“A criminal case FIR no.64 dated 10.9.2019 u/s 21/29/61/85 NDPS Act PS Kachha Pakka Tarn Taran was registered against accused [1] Harwinder Singh alias Rinku son of Hira Singh r/o Udar PS Lopoke, [2] Sandeep Singh alias Sunny s/o Angrej Singh r/o Chogawan from whom recovery of 150 gm of Heroin was made. During investigation on the basis of statement of above mentioned accused [1] Jugraj Singh alias Bholu son of Kuldeep Singh r/o Chogawan PS Lopoke [2] Amandeep Singh alias Aman s/o Sajatter Singh r/o Chogawan PS Lopoke were nominated as accused on 12.9.2019 during the course of investigation.

SI Baldev Singh no.843/TT along with police party conducted a raid on above said accused on 13.09.2019 in their residential house village Chogawan PS Lopoke but the Incharge of the raiding party SI Baldev Singh no.843/TT was beaten up badly and manhandled by the house incumbents along with their supporters, constable Kuldeep Singh no.768/TTN who was also a part of the raiding party just looked on and was a mere spectators. Some police officials from the above mentioned party were seen sipping a cup of Tea, totally oblivious to the gravity to the situation, this is an act of cowardice and is unacceptable in the uniformed service. Such an act deems him unfit to continue his service in police department as he is not loyal to his duty.

From the circumstances quoted above, the image of the whole police department has been tarnished in the eyes of public. And whereas I am satisfied with the above said facts and feel that continuation of constable Kuldeep Singh no.768/TTN in the service, in police force is most undesirable at public expenses and to the public detriment, I am well aware that penalty of dismissal from service is harsh but no sympathy can out weight the consideration of discipline, integrity and loyalty for public

good in uniformed service.

And whereas I am also satisfied that a regular departmental inquiry against constable Kuldeep Singh no.768/TTN is not reasonable since an incident like this diminishes the morale of entire police force and reduces its ability to perform their duty effectively. As such holding of inquiry is dispensed with as envisaged in Article 311[2][b] of the Constitution of India.

Now therefore, I Dhruv Dahiya IPS Senior Superintendent of Police of Tarn Taran being competent authority to dismiss constable Kuldeep Singh no. 768/TTN on due application of my mind without any prejudice, in the larger public interest in exercise of power vested in me by virtue of Punjab Police Rules 16.1 with section 7 of Police Act, 1961 and Article 311[2][b] of the Constitution of India do hereby dismiss him from service with immediate effect from 14.09.2019 A.N.”

Petitioners are aggrieved of similar orders.

Departmental appeal preferred by the petitioner stands rejected vide order dated 13.01.2020 wherein the appellate authority has not recorded any reason but has only recorded the conclusion to the effect that, “the punishment order is comprehensive and there is no infirmity in it.”

Learned counsel for the petitioner/s submits that from bare perusal of the impugned order it is evident that no reason has been recorded which can form basis to invoke Article 311 [2] [b] of the Constitution of India to justify his contentions. Further reliance is being placed upon Constitutional Bench in the case of ***Union of India Vs. Tulsiram Patel (1985) 3 SCC 398*** to contend that the order cannot be sustained.

Per contra learned counsel for the respondents submit that the order is self explanatory and the cogent reason has been recorded therein to dispense with the enquiry as the authorities were right in holding that the incident like this shall leave to lowering the morale of the entire police service and shall lose its ability to perform their duty effectively.

I have heard learned counsel for the parties and have gone through the records of the case.

The short question that would arise in the present writ petition is as to whether the impugned order dated 14.09.2019 passed by the punishing authority can be sustained in view of bare provisions as contained in Article 311 [2] [b] of the Constitution of India and as interpreted by the Apex Court in ***Tulsiram Patel's case (supra)***. While dealing with the similar order in CWP No.2852 of 2011 titled as ***Malkiat Singh vs. State of Punjab and others***, wherein inquiry was dispensed with by invoking Article 311(2)(b) of the Constitution of India, this Court has followed the ratio of law laid down in *Union of India vs. Tulsiram Patel*, (1985) 3 SCC 398, and held as under :

“Thus, the broader principles that emerge are :-

- (i) The authority can dispense with the inquiry by recording reasons in writing to the effect that holding of such inquiry is not reasonably practicable;*
- (ii) 'Not reasonably practicable' does not mean impossible. It rather connotes that the holding of inquiry is not practicable in the opinion of a reasonable man taking reasonable view of the prevailing situation;*
- (iii) Reasonable practicability of holding an inquiry is a matter of assessment to be made by disciplinary authority who is the best judge thereof;*
- (iv) A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motive(s) 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;*

- (v) *The finality given to the decision of the disciplinary authority by Article 311(3) is not beyond judicial review;*
- (vi) *The reason for dispensing with the inquiry must be recorded in writing not necessarily in the order but at least on the record ; and*
- (vii) *There must be some material on record to justify such reason to dispense with the inquiry.”*

The State Counsel does not dispute that Rule 16.2(5) of the Punjab Police Rules elaborately provides for procedure in the departmental inquiries and under the said Rule, there is no provision whereby the inquiry can be dispensed with. Trite it is that where law *viz* public authority with discretionary power, the said power must not be used arbitrarily. Power vested under Article 311(2)(b) is not unfettered but is qualified by a responsibility casted upon the authority to not only conclude that holding of inquiry is 'not reasonably practicable' but also mandates it to record such reasons in writing.

The impugned order when tested on the touchstone of the aforesaid principles, this Court finds that the reasons recorded by the Authority in dispensing with the inquiry fall short. In fact there is no reason recorded by the Authority to justify dispensing with the inquiry. Thus, the impugned order cannot be sustained. The Authority cannot dispense with the inquiry arbitrarily. Mere reproduction of the statutory expression cannot have an effect of dispensing with the Constitutional obligation casted upon the authority to give cogent reason for dispensing with the inquiry. The Competent Authority was not

expected to dispense with the inquiry lightly as has been done in the present case. It was required to take into consideration the facts and circumstances of the case and apply its mind which is found to be missing in the impugned order. No material has been placed on record to justify the casual approach or to back the satisfaction of the authority to dispense with the inquiry.

I may hastenly add here that this Court while entertaining the present writ petition has deliberately not ventured into the merits and facts of the case. The impugned order has been tested merely on the touchstone of Article 311(2) of the Constitution of India.

Liberty is granted to the respondents to proceed against the petitioner in accordance with law.

Resultantly, the present writ petitions are allowed. Impugned order dated 14.09.2019 annexed with the present writ petition along with subsequent orders thereto are hereby quashed with liberty to the respondents as stated herein above.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

(PANKAJ JAIN)
JUDGE

11.01.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No