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

**CWP No. 23684 of 2018
Date of Decision: 16.02.2023**

Ex EASI Anil Kumar No.416/Jhajjar

.....Petitioner

Vs

State of Haryana and Others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of Certiorari quashing the order dated 21.05.2014 (Annexure P-1) passed by the Superintendent of Police, Jhajjar, dismissing the services of the petitioner by invoking Article 311(2)(b) of the Constitution of India, order dated 14.06.2016 (Annexure P-3) passed by the Inspector General of Police, Rohtak Range, Rohtak, dismissing the statutory appeal filed by the petitioner and the order dated 30.08.2018 (Annexure P-8) passed by the Director General of Police, Haryana, dismissing the revision petition filed by the

petitioner by observing that the departmental enquiry was held in accordance with law and procedure and no legal infirmity was found therein.

Learned counsel for the petitioner submits that the petitioner was enrolled as a Constable on 28.12.1986. He was promoted to the post of EHC Constable on 20.01.2003. He was further promoted to the post of EASI on 10.03.2009. A criminal case bearing FIR No.340 was registered on 19.05.2014 under Section 365, 376, 354, 120-B of IPC and under Section 4 of POCSO Act, Police Station, Jhajjar.

Solely, on the basis of allegations contained in the aforesaid FIR, the order of dismissal was passed against the petitioner by the Superintendent of Police, Jhajjar thereby, dispensing with requirement of holding of regular enquiry. The petitioner was acquitted in the criminal case vide judgment of acquittal dated 29.07.2016 which has already attained finality.

A perusal of the order dated 30.08.2018 passed by the Director General of Police, Haryana would show that departmental enquiry was held in the present case, which is factually wrong as the petitioner was dismissed by invoking Article 311(2)(b) of the Constitution of India.

Learned Senior counsel for the petitioner submits that in view of registration of criminal case, departmental

enquiry should have been held in respect of alleged misconduct of the petitioner. The decision to dispense with the departmental enquiry cannot be restricted solely on the unbridled power of the authority, whereas, satisfaction of the authority is required on the basis of facts and circumstances of the case. It was incumbent upon the authority to show that the satisfaction was based on certain objective facts and was not the outcome of his whims and fancies. Holding of enquiry is a rule, whereas, dispensing the same by invoking Article 311(2)(b) of Constitution of India is an exception.

Para No.4 of the order dated 30.08.2018 (Annexure P-6) passed by the Director General of Police, Haryana reads as under:-

“The revisionist appeared before the undersigned for personal hearing and pleaded for mercy. I have carefully examined the appeal, the departmental enquiry file and the orders passed by the Punishing Authority. The departmental enquiry has been conducted in accordance with laid down procedure and has no legal infirmity in it. The allegations levelled against the revisionist are of grave nature, hence, no ground to interfere with the order passed by the punishing authority. The revision petition submitted by the revisionist against the order dated 14.06.2016 is hereby considered and rejected.”

It appears from the aforesaid order that the revisional authority has not applied its mind to the facts and circumstances

of the case.

At this stage, without meaning anything on the merits of this case, I deem it appropriate to set aside the order dated 30.08.2018 passed by the respondent No.2 and remand this case to the respondent No.2 to re-visit the issue and pass fresh order in accordance with law and instructions on the subject (if any).

Disposed of.

16th February, 2023
sapna

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No