

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

Date of Reserve: 29.04.2023

Date of Decision: 16.05.2023

CWP No.21363 of 2020 (O&M)

Ramesh Kumar

.....Petitioner

Vs

State of Haryana and others

.....Respondents

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Polist, Advocate
for the petitioner.

Mr. Narender Behgal, Asstt. A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari for quashing the order dated 19.11.2020 (Annexure P-7) passed by the Superintendent of Police, Kaithal dismissing the petitioner from service under Rule 16.2 of the Punjab Police Rules read with Article 311(2)(b) of the Constitution of India by dispensing with the departmental enquiry. Vide the impugned order, order of dismissal has been passed by stopping ongoing departmental enquiry for the

reasons mentioned in the impugned order.

[2]. The petitioner was appointed as a Constable in the Haryana Police on 06.11.1991. He was promoted as Head Constable on 14.06.2006 and was further promoted as EASI in the month of November 2013. The petitioner was promoted as Asstt. Sub. Inspector on regular post w.e.f. 01.02.2016. The petitioner has excellent service record throughout having earned nine good entries in his service tenure.

[3]. On 10.10.2020, a complaint was filed against the petitioner and on the basis of said complaint, an *ex parte* preliminary enquiry was held. The petitioner was suspended on 15.10.2020 and a chargesheet was issued to the petitioner on 30.10.2020. The petitioner was given only 48 hours to file his reply upto 02.11.2020. The petitioner submitted his representation to the Inspector General of Police on 02.11.2020 for the change of Enquiry Officer and with request to transfer the enquiry to some other District.

[4]. On the basis of complaint filed by the complainant, a preliminary enquiry was conducted by Ms. Himadree Kaushik, IPS, ASP-UT, Kaithal. On the basis of preliminary enquiry, the petitioner was suspended on 15.10.2020 and a regular departmental enquiry was ordered. Sh. Dalip Singh, HPS,

Deputy Superintendent of Police, AEC, Kaithal was appointed as an Enquiry Officer with direction to complete the enquiry on day-to-day basis.

[5]. The petitioner was chargesheeted. Summary of charges were to the effect that when the petitioner was posted as a Researcher in police station, FIR No.153 dated 16.07.2020, Police Station Cheeka was brought to his notice and he demanded an amount of Rs.1 lakh from the complainant (i.e. accused in said FIR No.153) for cancellation of the aforesaid FIR. The complainant gave him Rs.60,000/- as bribe in the month of September 2020 and thereafter the petitioner contacted the complainant from his mobile phone and called him to Cheeka Police Station and demanded bribe of Rs.70,000/- to get the cancellation report approved from the Superintendent of Police.

[6]. The petitioner told the complainant that in the case registered against him, report has been made to cancel the same and he would get the cancellation report approved from the Superintendent of Police, Kaithal. The petitioner demanded Rs.70,000/- in lieu thereof. The deal was settled between them for Rs.50,000/-. The petitioner told the complainant that the amount would be received by him through Baldev Singh son of

Arjun Singh resident of H.No.235-A, Street No.18 Guru Nanak Nagar, Patiala. The complainant paid Rs.25,000/- to the petitioner on 04.10.2020 through his friend Baldev Singh and it was alleged in the complaint that the petitioner was demanding another Rs.25,000/- as bribe through Baldev Singh. The petitioner made a phone call on the mobile of the complainant and asked him to hand over Rs.25,000/- to Rajiv at the shop of Makrana Marble situated on Cheeka-Patiala Road, which he would collect from there.

[7]. The complainant alleged that he was not willing to pay bribe of Rs.25,000/- to the petitioner, but in case he would not pay that money, the petitioner would not cancel the FIR registered against him. The complainant would pay the demanded money to the petitioner through his friend Baldev Singh and also wished to initiate criminal proceedings against the petitioner. The complainant also attached 'CD' containing recording of conversation on mobile phone between the petitioner and the complainant and also Rajiv regarding admission of money.

[8]. The petitioner made a representation to the Inspector General of Police, Karnal Circle, Karnal on 02.11.2020 for transfer of departmental enquiry from Kaithal to another District

detailing the circumstances arising out of FIR No.153 dated 16.07.2020 which was registered on the basis of complaint made by one Jasbir Kaur widow of Daljeet Singh against the complainant in the present case i.e. NRI Narender Singh and others.

[9]. The main prosecution witness namely Baldev Singh gave an affidavit on 09.11.2020. The same reads as under:-

“AFFIDAVIT

Baldev Singh S/o Arjan Singh, R/o H.No.235-A, Guru Nanak Nagar, Patiala Mb. No.9915584666.

1. *That I am resident of above mentioned address and I am retired Inspector from Punjab Police.*
2. *That during service I came in contact with Narender Singh S/o Banta Singh, R/o Theh Naval at Patiala. Then we became friends and we had good relations.*
3. *That an FIR No.153 had been lodged against Narender Singh on 16.07.2020 u/s 307, 328, 34 IPC and Narender Singh on 30.9.2020 came to me and said to me that you are a Police Officer and come with me to Cheeka to talk to ASI Ramesh Kumar.*
4. *That I, on asking of Narender Singh went to Cheeka with him to ASI Ramesh Kumar. I had not met Ramesh Kumar than I went to Reader, DSP. There I came to know that FIR in above case had*

been registered one month back and file was sent to SP Office, Kaithal.

5. *That when Narender Singh spoke to Ramesh Kumar that ASI Ramesh Kumar said that he is in Kaithal Court. Then I alongwith Narender Singh went to ASI. On asking Ramesh Kumar ASI said that completion report has gone from station and that will be approved in routine. There is no need to meet anyone in this regard and you can contest the court in court.*
6. *That Ramesh Kumar, ASI had said to Narender Singh in my presence that to return the money which I gave to you for admission of my son in Germany and then I took the guarantee to get his money returned.*
7. *That after the Ramesh Kumar ASI called me in relation of money and on recording calls, I had sent them to Narender Singh so he return the money guaranteed by me. But Narender Singh did not give any money to me. When I came to know that Narender Singh malafidely used the recordings sent by me and complained the higher authorities to wrongly implead Ramesh Kumar in corruption case. When I came to know the wrong complaint filed by Narender then I called him to Patiala and asked him about the wrong complaint and showed my resentment, then there was hot conversation with us and I had said him that why he gave wrong complaint against ASI Ramesh Kumar, then he went from there. Then I came to know that Narender Singh has gone abroad after*

filing wrong complaint against ASI Ramesh Kumar. I on oath saying this that for cancelling the above case. There was no demand of money from ASI Ramesh Kumar and neither I nor Narender Singh gave any bribe to Ramesh Kumar. This story is concocted and Narender Singh in order to digest the money of Ramesh Kumar filed the wrong complaint.

Sd/- Deponent

I am giving this statement in full senses without any pressure.

Sd/- Deponent”

[10]. The Superintendent of Police, Kaithal under Rule 16.2 of the Punjab Police Rules read with the powers under Article 311(2)(b) of the Constitution of India dismissed the petitioner from service vide order dated 19.11.2020 and the house occupied by the petitioner was also ordered to be vacated vide order dated 23.11.2020.

[11]. Learned Senior counsel for the petitioner with reference to the aforesaid facts submitted that the present case was not a case to dismiss the petitioner from service by exercising the powers under Article 311(2)(b) of the Constitution of India. Under Article 311(2)(b) of the Constitution of India, 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 enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. Provided that this clause shall not apply (a) where a person is dismissed or removed or reduced in rank on the ground of misconduct 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.

[12]. With reference to the aforesaid provision, learned Senior counsel for the petitioner submitted that Article 311(2)(b) of the Constitution of India is not attracted to the present case as there was no material on the basis of which the punishing authority could have reached to the conclusion that it is not reasonably practicable to hold such enquiry. The punishing

authority has exercised its power arbitrarily without any material on record, particularly when the departmental enquiry has already been ordered against the petitioner for which even summary of charges were served upon the petitioner and he had already asked for shifting of the said enquiry out of the District.

[13]. Learned Senior counsel for the petitioner further submitted that the petitioner was issued chargesheet on 30.10.2020 and there was no new material before the punishing authority after issuing chargesheet on the basis of which the punishing authority could have exercised the powers under Article 311(2)(b) of the Constitution of India. There was no new material before the punishing authority after 30.10.2020 on the basis of which the punishing authority could dismiss the petitioner from service. There was no justification not to hold regular departmental enquiry to find out the truth in respect of charges levelled against the petitioner.

[14]. Learned Senior counsel for the petitioner further submitted that the petitioner was to submit his reply to the chargesheet upto 02.11.2020 and on 02.11.2020, the petitioner had submitted his representation to change the Enquiry Officer and prayed that the enquiry be conducted in some other District.

Thereafter the order of dismissal from service was passed only on the ground that the petitioner had made request to transfer the enquiry to some other District, otherwise there was no material on the basis of which the regular departmental enquiry was dispensed with and the punishing authority has dismissed the petitioner from service without holding any regular departmental enquiry while exercising the powers under Article 311(2)(b) of the Constitution of India. The petitioner had submitted representation before the Inspector General of Police for change of Enquiry Officer and without waiting for any decision of the Inspector General of Police, the impugned order of dismissal from service came to be passed by the Superintendent of Police, Kaithal.

[15]. Learned Senior counsel further submitted that as per list of witnesses, Baldev Singh was one of the cited witnesses, who has not supported the case of the Department. The complainant Narender Singh had gone abroad after filing of the complaint against the petitioner. All these things have been stated by Baldev Singh by way of affidavit. The said Baldev Singh being the main prosecution witness has not supported the case, rather stated that the petitioner was not involved in any manner. The witness has admitted that the complainant Narender Singh had taken money from the petitioner to admit

his son in M.D. course in Germany and he further admitted that recording of the petitioner was sent to the complainant to pay the said amount. So, had the regular departmental enquiry been conducted, the petitioner would have proved his innocence. The petitioner was illegally implicated by the complainant with ulterior motive as he was not willing to pay the due amount of Rs.50,000/- to the petitioner which the complainant had taken from the petitioner.

[16]. Learned Senior counsel further submitted that the punishing authority while passing the impugned order has relied upon the preliminary report which was totally *ex parte* and no opportunity was granted to the petitioner during the course of preliminary enquiry. Unverified and unproved contents of the CD were taken into consideration. The CD was never produced in the enquiry in the presence of the petitioner. The contents of the CD being secondary evidence could not have been relied by the Enquiry Officer in any manner for want of compliance of Section 65-B of the Evidence Act. Even the complainant and Baldev Singh did not appear before the preliminary Enquiry Officer to prove the version of the prosecution. Even the genuineness of the CD has not been verified by means of any lawful mechanism by sending the same to Forensic Laboratory, nor the preliminary Enquiry Officer or punishing authority has passed any order to

obtain voice sample of the petitioner viz-a-viz. voice contained in the CD in order to ascertain the genuineness of the CD. Had the regular departmental enquiry been held, the petitioner would have all the chance to prove his innocence on the basis of material which he would have submitted during the course of enquiry. The petitioner had completed 29 years of excellent service and was promoted from time to time. At the time of passing of the impugned order of dismissal, his service record has not been considered. Under Rule 16.2 of the Punjab Police Rules, service record of the petitioner was required to be scrutinized at the time of imposing punishment and in the absence thereof, the order of dismissal from the service would be illegal. In support of his contention, learned Senior counsel referred to **Sudesh Kumar vs. State of Haryana, 2005(11) SCC 525; Jaswant Singh vs. State of Punjab and others, 1991 AIR (Supreme Court) 385; Dinesh Singh vs. State of Punjab and others, 2017(2) PLR 9; Ramesh Chand vs. State of Punjab and others, 2013(4) SCT 830; Ex. Head Constable Tara Singh vs. State of Punjab and others, 2008(1) S.C.T. 478 (DB); Darshan Singh vs. The State of Punjab, 1991(2) SCT 714 and Rakesh Jain vs. State of Haryana, 2016(2) R.C.R. (Criminal) 870;**

[17]. Per contra, learned State counsel submitted that the

complaint of the complainant was marked to Ms. Himadree Kaushik, ASP (under Training) Kaithal for enquiry. After conducting the enquiry, the Enquiry Officer submitted her report to the Superintendent of Police, Kaithal on 15.10.2020 and the allegations were found to be *prima facie* proved. On the basis of the said report, the petitioner was placed under suspension and a regular departmental enquiry was ordered to be conducted. The DSP (AEC) Kaithal was appointed as an Enquiry Officer. Concurrence of the District Magistrate, Kaithal under the provisions of Rule 16.38 of the Punjab Police Rules was also obtained for conducting the departmental enquiry against the petitioner.

[18]. In the meantime, the complainant sent complaint to the Superintendent of Police, Kaithal alleging that the petitioner was using all types of extreme harassment and pressure at his command including torturing him 24x7 besides extraction of money from time to time during his stay in India. Due to which, the complainant had to leave the country with no choice. Due to these circumstances, the complainant left India for Germany on 14.10.2020. The complainant alleged that he had to leave India due to fear of the petitioner. The said complaint was also sent to the Enquiry Officer for further necessary action.

[19]. Learned State counsel further submitted that the Enquiry Officer prepared summary of allegations by noticing the fact that the complainant has shifted to Germany owing to the harassment by the petitioner. In the same manner, the complainant had written to the Enquiry Officer in this regard. The relevant parts of the alleged incriminating allegations against the petitioner read as under:-

- “1) When Ramesh ASI got to know the allegations of corruption put by complainant, he started approaching his acquaintances and asking complainant to contact him.*
- 2) He is blackmailing the complainant and threatening him that the FIR lodged him which has been put for cancellation will be recalled. He also mentioned that he would go to the VRK branch and get his file pulled out again.*
- 3) The complainant is facing harassment and his friend Baldev is facing similar issues of calls and threats. The complainant was even told that he will have to come back from Germany to give a statement against ASI Ramesh to dissuade him.*
- 4) A certain Jasbir Singh Pehalwan r/o Peedal, Cheeka has been approaching people on behalf of Ramesh and threatening them as well.”*

[20]. In compliance of the order appointing Dalip Singh, HPS,

DSP, Kaithal (AEC), the Enquiry Officer also made a report that during stay of the complainant in India, the petitioner kept on harassing him during day and night for extracting money due to which the complainant left India and went to Germany. The Enquiry Officer has also noticed that the petitioner has also filed a representation for changing the Enquiry Officer and for shifting the departmental enquiry to some other District. The Enquiry Officer by noticing the aforesaid facts has submitted his report vide memo No.436/DSP (AEC)/Kaithal dated 03.11.2020 that the petitioner has threatened and pressurized the main witnesses in the regular departmental enquiry namely Narender and Baldev Singh to which the regular departmental enquiry was being hindered. In view of attending circumstances on record, the competent authority thought it appropriate to dispense with the regular departmental enquiry and passed the order of dismissal under Article 311(2)(b) of the Constitution of India.

[21]. I have considered the submissions made by learned counsel for the parties.

[22]. In the present case, owing to the alleged misconduct of the petitioner, a regular departmental enquiry was ordered. The Enquiry Officer was also appointed. Thereafter the impugned

order of dismissal came to be passed by dispensing with the regular enquiry under Article 311(2)(b) of the Constitution of India for the reasons mentioned in the preceding part of the order. It is evident from the record that on the basis of preliminary enquiry, the petitioner was suspended and regular departmental enquiry was ordered. In the preliminary enquiry, the Enquiry Officer has relied upon unverified and unproved contents of the CD which ought to have been proved during course of enquiry by way of any scientific mechanism.

[23]. The petitioner could not prove his innocence for want of opportunity. Had the regular departmental enquiry been conducted, the petitioner would have all the opportunities to prove his innocence by leading cogent evidence. The regular departmental enquiry could be dispensed with only in the circumstances where the authority is satisfied that for some reason, to be recorded in writing that it is reasonably impracticable to hold the departmental enquiry.

[24]. In the instant case, regular departmental enquiry was being held. It was only on the basis of unverified facts, particularly in the light of request for transfer of the Enquiry Officer made by the petitioner, the Enquiry Officer made a report that the petitioner was involved in threatening the complainant,

who had to go abroad. The allegations made by the complainant could not be put to the petitioner in order to have his version recorded. Baldev Singh has refuted the allegations of the complainant in his affidavit which could not be tendered in evidence either on behalf of the Baldev Singh himself being a cited witness or in the defence evidence to be produced by the petitioner at an appropriate time. In view of legal position on record, it could not be said that it was not reasonably practicable to hold the regular departmental enquiry.

[25]. In the light of aforesaid facts, I deem it appropriate to set aside the impugned order dated 19.11.2020 (Annexure P-7) passed by the Superintendent of Police, Kaithal as the same is not in consonance with the requirement of Article 311(2)(b) of the Constitution of India. The writ petition is allowed. However, the respondent-Department would be at liberty to proceed with the departmental enquiry as ordered vide order dated 15.10.2020. The petitioner would also be at liberty to avail his remedies including pressing his request for change of the Enquiry Officer in accordance with law.

May 16, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No