

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

**CWP No.22936 of 2022 (O&M)
Date of decision : 09.03.2023**

Harmeet Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.S. Bajaj, Advocate
for the petitioner.

Ms. Shivani Sharma, Dy. Advocate General, Punjab.

PANKAJ JAIN, J.

CM No.3523 of 2023

This is an application for placing on record replication to the written statement filed on behalf of respondents No.1 to 4 along with Annexure P-11.

For the reasons recorded in the application, application is allowed. Replication to the written statement filed on behalf of respondents No.1 to 4 along with Annexure P-11 is taken on record.

CWP No.22936 of 2022

Prayer is for issuance of a writ in the nature of certiorari quashing order dated 10th of January, 2020 (Annexure P-1) passed by respondent No.4 whereby the petitioner has been ordered to be dismissed from services and further orders dated 3rd of November,

2020 (Annexure P-3) and that dated 3rd of August, 2022 (Annexure P-7) whereby order Annexure P-1 has been affirmed in appeal and revision thereafter.

2. Petitioner was working as Head Constable with the respondent-Department when he was booked in FIR No.03 dated 9th of January, 2020 registered for the offences punishable under Section 384, 389, 419, 34 IPC. On the very next day i.e. on 10th of January, 2020, impugned order (Annexure P-1) has been passed whereby the petitioner has been ordered to be dismissed from services invoking Article 311(2)(b) of the Constitution of India. Appeal preferred by the petitioner stands dismissed vide order dated 3rd of November, 2020. The petitioner preferred revision which also stands dismissed vide impugned order, Annexure P-7. In the interregnum, the petitioner and his co-accused stand acquitted vide judgment dated 14th of December, 2021 (Annexure P-5).

3. Ld. Counsel for the petitioner would contend that order, Annexure P-1, dismissing the services of the petitioner without inquiry is in the teeth of Article 311 and the ratio of law laid down by Apex Court in **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC 398** as no reason has been recorded therein to dispense with the inquiry. He would further contend that even written statement filed on behalf of the respondents is totally silent *qua* the reason for dispensing with the

inquiry. He thus submits that Annexure P-1 being in teeth of settled proposition of law and against the mandate of Article 311 of the Constitution of India cannot be sustained and deserves to be set aside.

4. Per contra, State Counsel would submit that the allegations levelled against the petitioner do not behove a police official. Petitioner along with his accomplices misrepresented themselves to be members of Special Task Forces and demanded Rs.2.00 lacs threatening the complainants in the FIR for implicating them in a false case under the NDPS Act. The petitioner being a member of Disciplined Force has been rightly dismissed from services. Counsel for the respondent-State however is not in position to dispute the fact that apart from what stands recorded in the impugned order there is no separate reason recorded for dispensing with regular inquiry in the official record. She however reiterates that in view of the allegations levelled against the petitioner he was not liable to be retained in service even for a single day.

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

6. The issue involved in the present writ petition is : *'whether impugned order (Annexure P-1) passed by the respondent-Authorities dismissing the services of the petitioner after dispensing with inquiry invoking Article 311(2)(b) can be sustained when tested on the*

touchstone of settled law?'

7. It will be apt to peruse impugned order Annexure P-1, which reads as under :-

ORDER

Whereas, it has been brought to my notice that HC/PP Harmeet Singh No.2086/LDH posted in Commissionerate Ludhiana being the member of a disciplined force dishonestly and fraudulently impersonated himself as the member of the special task force and under the garb of that impersonation attempted to extort Rs 2 lakhs from Satnam Singh s/o Pargat Singh and Inderjit Singh s/o Daljit Singh and in pursuance to this attempt he dishonestly retained their alto car and mobile phones. In this regard a criminal case bearing FTR No 03 dated 09/01/2020 u/s 384/389/419, 34 IPC has been registered against him as well as Bholla Paswan at PS Sadar Ludhiana. In this regard, a relevant report has been sent by SHO PS Sadar Ludhiana duly forwarded by ACP(South) and ADCP Zone-II Ludhiana.

Whereas, after perusing the official record and after applying my unbiased independent mind I being the competent authority, after examining and considering all the aspects, has made up my mind that it is not at all desirable to retain HC/PP Harmeet Singh No 2086/Ldh in service at the public expense. His retention and continuation in service may be detrimental to the interests of the state as well as the general public and to safeguard these interests with immediate effect, **I consider that in view of the indulgence of HC/PP Harmeet Singh No 2086/Ldh, it is not reasonably practicable to hold any enquiry against him at this stage.** I being the competent authority, is also well aware that the penalty of dismissal from service is very harsh and oppressive for a public servant, but no sympathy can outweigh the consideration of the protection of the interests of the state and the regard for public good.

Therefore, 1, Rakesh Agrawal, IPS, Commissioner of Police, Ludhiana being the competent authority and having the

powers to dismiss HC/PP Harmeet Singh No 2086/Ldh from service, while exercising those powers conferred under rule 16.2 (1) of PPR and under article 311 (2) (b) of the Constitution of India, hereby dismiss HC/PP Harmeet Singh No 2086/Ldh from service with immediate effect.

Commissioner of Police,
Ludhiana.”

8. Law related to Article 311(2)(b) is well settled. This Court following the guiding light of ratio of law laid down in Tulsi Ram Patel's case (supra) held in **CWP No.18790 of 2022** titled as **Bhupinder Singh vs. State of Punjab and others**, that :-

“...The expression 'not reasonably practicable' as contained in Article 311 has been interpreted by Constitutional Bench in **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC 398**, and the same continues to be the guiding light. It has been held :

“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. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. 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 finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of *Arjun Chaubey v. Union of India and others, [1984] 3 S.C.R. 302*, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.”

9. 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.”

9. The reason recorded by the authority is totally deficient and it is unfathomable for this Court as to how the indulgence of the petitioner makes the inquiry not reasonably practicable as held by the punishing authority. As per settled law a

disciplinary authority cannot dispense with the disciplinary inquiry lightly. The reason for dispensing with the inquiry must be justified on the basis of some material on record. Mere reproduction of statutory expression cannot have an effect of dispensing with the constitutional obligation casted upon the authority. Even in the written statement filed before this Court, there is no reason recorded separately on file to justify invoking of Article 311(2)(b). No material has been placed on record that has an effect of backing satisfaction of the authority to dispense with the inquiry. Thus, when tested on the touchstone of the settled proposition of law, impugned order (Annexure P-1) is found to be wanting. Likewise, the Appellate Authority has also not gone into the said aspect and has passed order dismissing the appeal filed by the petitioner casually.

10. In view of the aforesaid fact and without venturing into the merits of the case, impugned order (Annexure P-1) and subsequent orders passed by the Appellate Authority, Annexure P-3 and that passed by the Revisional Authority Annexure P-7 are held to be unsustainable and are thus hereby quashed.

11. It has also come on record that in the interregnum the petitioner has earned acquittal as well. The effect of acquittal on the punishment awarded to the petitioner is neither the subject matter of the present writ petition nor this Court has gone into that question as

the Authority is yet to apply its mind in terms thereof. Thus, the present order should not be construed as an expression on the merits of the case or on the effect of judicial acquittal earned by the petitioner. The impugned order has been tested purely on the basis of Article 311 of the Constitution of India.

12. The respondents are thus granted liberty to proceed in the matter in accordance with law.

13. Resultantly, the present writ petition is allowed with liberty to the respondents in terms as stated hereinabove.

March 09, 2023
Dpr

(Pankaj Jain)
Judge

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