



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

CWP No. 11446 of 2012 (O&M)

Date of Decision: 11.02.2025

William Masih

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ajay Pal Singh Gill, Advocate and
Mr. Harbir Singh Sandhu, Advocate
for the petitioner

Mr. Aman Dhir, DAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of :

- I. order dated 22.01.2008 (Annexure P-1) whereby he was awarded penalty of dismissal from service;
- II order dated 05.12.2008 (Annexure P-3) whereby his appeal was dismissed; and
- III. order 14.07.2009 (Annexure P-5) whereby his revision was dismissed.

2. The petitioner joined Punjab Police as a Constable. While he was posted at Amritsar, he was detailed for one accused namely Balwinder



Singh son of Jagir Singh who was to be produced in a Court at Delhi on 18.01.2008 in connection with a case registered by Director of Revenue Intelligence. Balwinder Singh was a hardcore smuggler. He was involved in multiple cases under NDPS Act. The petitioner and Head Constable Rakesh Kumar had to take away aforesaid accused by train. They were issued Railway Warrant. They did not get railway ticket in lieu of Railway Warrant and travelled through a private car from Amritsar to Delhi. Balwinder Singh accused escaped from their custody. FIR No. 39 dated 19.01.2008 under Sections 222/223/224/120-B of IPC was registered against them. They faced trial and came to be acquitted by trial Court vide judgment dated 23.12.2013.

3. The jurisdictional Superintendent of Police vide order dated 22.01.2008 dismissed both the officers without conducting enquiry. The order of dismissal was passed invoking Clause (b) of Second proviso to Article 311(2) of the Constitution of India. The petitioner unsuccessfully preferred appeal before Deputy Inspector General of Police, Amritsar. He further unsuccessfully preferred revision before Director General of Police.

4. Mr. Ajay Pal Singh Gill, Advocate submits that petitioner as well as co-accused have been acquitted by trial Court in the FIR which was registered alleging escape of accused Balwinder Singh from their custody. Co-accused Rakesh Kumar approached Civil Court assailing orders of dismissal passed by departmental authorities. Learned District Judge, Amritsar vide judgment dated 24.05.2018 while setting aside judgment and decree of trial Court ordered to reinstate Rakesh Kumar without back wages.

The department was granted liberty to hold regular departmental enquiry.



5. Mr. Aman Dhir, DAG, Punjab expressed his inability to controvert that petitioner and co-accused Rakesh Kumar stand acquitted in the criminal proceedings and Rakesh Kumar has already been reinstated.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. From the perusal of record, it is evident that petitioner stands acquitted in criminal case. He has not been found guilty for escape of accused from his custody. The learned District Judge, Amritsar has ordered to reinstate co-accused Rakesh Kumar and liberty has been granted to department to initiate regular departmental enquiry.

8. From the perusal of record, it is evident beyond the pale of doubt that petitioner was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of 1934 Rules read with Article 311 of the Constitution of India. As per Clause (b) of second proviso to Article 311 (2) of the Constitution of India, inquiry may be dispensed with (i) where person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (ii) where the competent authority finds that it is not reasonably practicable to hold such inquiry; or (iii) where President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. For the ready reference, Article 311(2) of the Constitution of India is reproduced hereinbelow:-

“311 (2)- 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 inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further 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; 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.”

9. A Constitutional Bench in **Union of India v. Tulsiram Patel, (1985) 3 SCC 398**, has observed that while invoking the rigor of Clause (b) of second-proviso to Article 311(2), if disciplinary authority failed to record any reason as to why it is not practicable to hold inquiry, such an order is void and unconstitutional. The relevant extracts of the judgment read as:

“133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is



a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.”

10. In the case in hand, while dispensing with departmental inquiry, the disciplinary authority vide order dated 22.01.2008 (Annexure P-1) has observed as under:-

“.....Therefore, in these circumstances and under Article 311(2) (B) of the Constitution of India and under Punjab Police Rules 16.24 it would not be appropriate to initiate requisite departmental proceedings and such as the departmental action is postponed due to the following reasons:-

1. As no prosecution witness would be ready to depose against them on account of the fact that they have joined hands with very dangerous smugglers who are against the country.

2. The life of enquiry officer can be in danger as these officials have got contacts with such persons can even kill nay officer illegally to fulfil their illegal motive.

3. As it would take long time to complete departmental enquiry and for such long time, it would not be appropriate and safe to keep such officials in police department and it would also be not in the interest of public.”

11. The reasons advanced by Senior Superintendent of Police, Amritsar City for dispensing with inquiry are not plausible reasons. The respondent can dispense with inquiry if actually it is not practicable to hold the inquiry. Mere writing that it is not practicable to hold inquiry is not



compliance of mandate of either Constitution of India or Rule 16.24 of the 1934 Rules. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry.

12. As the petitioner has already been acquitted by trial Court and his co-accused was not only ordered to be reinstated but has actually already been reinstated, the petitioner on the ground of parity deserves to be reinstated. As conceded by Mr. Ajay Pal Singh Gill, Advocate, the petitioner shall not be entitled to back wages and department would be at liberty to conduct regular departmental enquiry.

13. In the wake of above discussion and findings, the impugned orders dated 22.01.2008 (Annexure P-1), 05.12.2008 (Annexure P-3) and 14.07.2009 (Annexure P-5) are hereby set aside and petitioner is ordered to be reinstated with immediate effect. He, as conceded by his counsel, shall not be entitled to back wages. The department would be at liberty to conduct regular departmental enquiry in terms of Rule 16.24 read with Rule 16.37 of Punjab Police Rules, 1934.

14. Before parting with the judgment, this Court expresses its doubt about the maintainability of Civil Suit against orders passed by quasi judicial authorities. The Civil Courts are re-appreciating entire evidence led during departmental enquiry and setting aside orders of disciplinary as well as Appellate Authorities which are discharging quasi judicial function. The Supreme Court time and again has held that scope of interference in departmental proceedings under Articles 226 and 227 of the Constitution of India is very limited. The Courts have no authority to re-appreciate evidence

examined by departmental authorities. The quantum of punishment can be re-considered if Court finds that it is disproportionate to the alleged offence.

(JAGMOHAN BANSAL)
JUDGE

11.02.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	