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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-605 of 1995

Bhupinder Singh
.....Appellant
Versus
The Punjab State and others
.....Respondents

Sr. No.	Particulars	Details
1.	The date when the judgment is reserved	13.02.2026
2.	The date when the judgment is pronounced	07. 03.2026
3.	The date when the judgment is uploaded on the website	09.03.2026
4.	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. Sukhmani Patwalia, Advocate and
Mr. Gaurav Jagota, Advocate,
for the appellant.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 15.09.1994, passed by the Court of learned Additional District Judge, Amritsar, vide which the appeal preferred by the respondents has been allowed and the judgment and decree dated 22.01.1994, passed by learned Sub Judge IInd Class, Amritsar, whereby suit of the appellant-plaintiff for declaration was decreed, has been set aside.
2. Parties to the *lis* are being referred to as per their status before the trial Court. The pleaded case of the plaintiff is that he joined police force on 23.10.1981 as Constable. He proceeded on seven days'

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sanctioned leave on 27.02.1987 to attend a marriage in Madhya Pradesh. Unfortunately, while in Durg, Madhya Pradesh, on 04.03.1987, plaintiff was arrested in case FIR No.282/1987 registered under Sections 395/397/398 IPC, Section 25 of the Arms Act; FIR No.294/87 registered under Section 394 IPC and FIR No.287/87 registered under Section 307 IPC at Police Station Chhowant, District Durg, Madhya Pradesh. Information regarding his arrest was sent by the Superintendent of Police, Durg, Madhya Pradesh, to the Superintendent of Police, Kapurthala. Acting on the said information, Senior Superintendent of Police, Kapurthala, vide order dated 16.06.1987, removed the plaintiff from service with immediate effect while exercising powers vested in him by virtue of Rule 16.1 of the Punjab Police Rules and Article 311(2)(b) of the Constitution of India, by recording that he was satisfied that in the interest of security of the State of Punjab, it was not expedient to hold an enquiry against the plaintiff and that plaintiff was guilty of such mis-conduct which render him to be removed from service of the Punjab Police Department. The said order was despatched to the plaintiff at his home address at Village Khanowal, Tehsil Ajnala. However, since the plaintiff was in custody in Durg at that time, he could not get the order and failed to file appeal against his removal from service. No personal hearing was given to him before his dismissal from service. Plaintiff was acquitted by the Court of learned Additional Sessions Judge, Durg (M.P.) vide judgment dated 12.07.1990. When the plaintiff came back home, he learnt about the order of his removal from service, in the month of July, 1990. The

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time for filing appeal before the DIG had already expired, so he was prevented from filing the appeal. Thus, he served a notice under Section 80 CPC upon the defendants, but to no avail. Thereafter, plaintiff filed a suit for declaration to the effect that the order dated 16.06.1987, passed by the Senior Superintendent of Police, Kapurthala, removing the plaintiff from service with immediate effect is wrong, illegal, arbitrary, malafide, cryptic, capricious, wanton, without jurisdiction, non-speaking and non est having been passed in violation of mandatory, statutory police rules and the provisions of the Constitution of India, thus, ultra vires the Constitution and void *ab initio* and hence inoperative against the plaintiff and the plaintiff continues to be a Constable in District Punjab, Kapurthala, as before 16.06.1987 and is entitled to all the pay, power and privileges of the post of Constable.

3. Upon being served, defendants contested the suit by filing a written statement taking various preliminary objections. On merits, it was admitted that the plaintiff worked in the defendant-department and was granted casual leave for eight days. He absented himself from duty without any further leave or permission. He was arrested in three criminal cases in Durg, Madhya Pradesh. The implication of the plaintiff in a case of dacoity was a grave misconduct done by him. Therefore, holding of an enquiry against the plaintiff was not expedient due to interests of security of the State. Therefore, he was rightly removed from service by the Senior Superintendent of Police, Kapurthala, by exercising powers vested in him by virtue of Rule 16.1

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of the Punjab Police Rules and Article 311(2)(b) of the Constitution of India. From the pleadings of the parties, following issues were framed by the trial Court: -

- “1. *Whether the suit is within time? OPP*
2. *Whether the order dated 16.6.87 is illegal void and in-operative against the rights of the plaintiff? OPP*
3. *If issue No.2 is proved, whether the plaintiff is entitled to the declaration and consequential relief prayed for? OPP*
4. *Relief.*

4. The trial Court, vide judgment and decree dated 22.01.1994, after appreciating evidence and hearing learned counsel for the parties, recorded the finding that the suit filed by the plaintiff was within limitation and consequently issue No.1 was decided in favour of the plaintiff, issues No.2 and 3 were also held in favour of the plaintiff and decreed the suit of the plaintiff to the effect that order dated 16.06.1987, passed by Senior Superintendent of Police, Kapurthala, removing the plaintiff from service with immediate effect was illegal, null, void, in-operative and not binding on the plaintiff and plaintiff was held entitled for all his back wages and other regular benefits. The defendants were directed to pay his back wages and other regular benefits within three months from the passing of the order. However, department was granted liberty to initiate departmental proceedings afresh as per law, if deemed necessary.

5. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal, which was allowed by the First Appellate Court, vide judgment and decree dated 15.09.1994, and

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judgment and decree of the trial Court was set aside. Hence, the instant Regular Second Appeal.

6. Learned counsel for the appellant contended that the judgment and decree passed by the first appellate Court is erroneous, as it has erred in law in allowing the appeal filed by the respondents and setting aside the well-reasoned judgment and decree of the trial Court. She further contended that the order passed by the respondents dispensing with the departmental enquiry is wholly laconic and is not germane to the requirements of Article 311(2)(b) of the Constitution of India, as the disciplinary authority can exercise power under Article 311(2)(b) of the Constitution of India only when it is not expedient to hold departmental inquiry. In the present case, there was no necessity or reason to pass order of removal of the appellant from service by dispensing with the departmental inquiry by invoking Article 311(2)(b) of the Constitution of India. The First Appellate Court failed to appreciate that the respondents ought to have recorded in writing its satisfaction that it was not reasonably practicable to hold the inquiry contemplated under Article 311(2)(b) of the Constitution of India, however, in the present case, neither the department recorded its satisfaction nor the same was conveyed to the appellant. She further contended that mere registration of an FIR is not a ground to dispense with the enquiry and dismiss an employee by invoking Article 311(2)(b) of the Constitution of India. She further contended that in the present case there is violation of Rule 16.38 of the Punjab Police Rules.

She further contended that judgment and decree passed by the first

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appellate Court being perverse is liable to be set aside. In support of her contentions, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Sudesh Kumar v. State of Haryana and others, 2005(11) SCC 525; Union of India v. Tulsiram Patel, AIR 1985 Supreme Court 1416; Civil Appeal No.10587 of 1983 – Jaswant Singh v. State of Punjab and others, decided on 27.11.1990*** and the judgments of this Court in ***CWP-7514 of 2022 – Harjit Singh v. State of Punjab and others, decided on 16.11.2022; Darshan Jit Singh Dhindsa v. State of Punjab, 1993(1) SCT 338; Constable Harinder Kumar v. State of Punjab and another, 2014(1) SCT 733; CWP-8612 of 2021 – Baljinder Singh v. State of Punjab and others, decided on 13.05.2024; CWP-2448 of 2020 – Sher Singh v. State of Punjab and others, decided on 26.08.2022; Prem Saran Bansal v. State of Punjab and others, 2014(4) SCT 481 and CWP-1059 of 2015 – Ashok Puri v. State of Punjab, decided on 24.08.2015.***

7. *Per contra*, learned State counsel contended that the judgment and decree passed by the first appellate Court is perfectly legal and valid. He contended that the First Appellate Court has rightly observed that the appellant was arrested in a case of attempt to dacoity and was involved in three criminal cases in Durg, Madhya Pradesh and such misconduct is an anti-national activity and it was a sufficient ground for dispensing with the regular enquiry.

8. I have heard learned counsel for the parties and perused the record.

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9. The question of law which arises for consideration in the present appeal is as to whether the punishing authority was empowered to dispense with the departmental enquiry against the appellant by invoking Article 311(2)(b) of the Constitution of India before removing him from service?

10. Admittedly, appellant joined Punjab Police as Constable on 23.10.1981. He proceeded on sanctioned leave on 27.02.1987 for seven days to attend a marriage at Durg, Madhya Pradesh. In Durg, he was arrested in a bank dacoity case. On information received from Superintendent of Police, Durg, Superintendent of Police, Kapurthala, vide order dated 16.06.1987, removed the appellant from service, without holding any departmental enquiry, by recording that it was not expedient to hold an enquiry against the appellant, by invoking provisions of Article 311(2)(b) of the Constitution of India. Thereafter, the appellant was acquitted by the Court of learned Additional Sessions Judge, Durg, vide judgment dated 12.07.1990. The suit filed by the appellant against the order dated 16.06.1987 was decreed, however, in appeal by the respondents, the findings of the trial Court have been reversed and suit of the appellant-plaintiff has been dismissed.

11. It would be apt to reproduce the order dated 16.06.1987, whereby the plaintiff was removed from service. The same reads as under: -

“ORDER

Whereas Constable Bhupinder Singh No.336/KPT is guilty of such misconduct as renders him liable to removal from service of Punjab Police Deptt.

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And whereas, I am satisfied that in the interest of the security of the State of Punjab, it is not expedient to hold an enquiry against the aforesaid Constable Bhupinder Singh No.336/KPT as required by clause (2) of Article 311 of the Constitution of India for his removal from Govt. service.

Now, therefore, in exercise of the powers vested in me by virtue of Punjab Police Rules 16.1 read with Article 311(2)(b) of the Constitution of India, I, K.L. Lekhi, IPS, Superintendent of Police, do hereby remove the aforesaid Constable Bhupinder Singh No.336/KPT from Govt. Service of the Police Deptt. with immediate effect.

*Attested
Head Clerk*

*Sd/- K.L. Lekhi
Superintendent of Police,
Kapurthala.”*

12. The Hon’ble Supreme Court in **Sudesh Kumar** (supra) had held that enquiry under Article 311(2) is a rule and dispensing with the same is an exception. The authority dispensing with the enquiry must satisfy for reasons to be recorded that it is not reasonably practicable to hold enquiry. In the said judgment it has been held as under: -

“11. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order is that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is

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likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23rd December, 1999, the Visa of the complainant was extended up to 22nd December, 2001. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry.”

To the same effect is the judgment of a Division Bench of this Court in ***Darshan Jit Singh Dhindsa*** (supra), wherein it has been held as under: -

“6. The Hon'ble Supreme Court in Jaswant Singh's case (supra) has categorically laid down that on the satisfaction of the condition i.e. existence of a situation where an enquiry is not reasonably practicable; which the disciplinary authority by recording in writing its reasons for his satisfaction with respect to practicability of holding an enquiry in the existing facts, situation or other surrounding circumstances prevailing on the date of passing the order or dismissal, the enquiry could be dispensed with by the disciplinary authority. It is only when the disciplinary authority comes to above conclusion and records the finding, that the enquiry can be dispensed with, and the compliance under Article 311(2) is not required. It was categorically observed that the reasons recorded for the subjective satisfaction of the disciplinary authority are subject to judicial scrutiny. It was made incumbent for the Court to interfere if it is found that the reasons recorded for dispensing with the enquiry are arbitrary or mala fide or motivated by extraneous consideration or merely an abuse to dispense with the enquiry. Holding of an enquiry should not be lightly

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dispensed with. To the similar effect are the observations made in Ikramuddin Ahmed Borah's case (supra).

7. The morsel information available on record and imbibed in the order is only to the effect that it is not reasonably practicable to hold an enquiry. It would be expedient to reproduce the satisfaction recorded by the Appointing Authority in his own words, which runs as under :-

"And whereas I am satisfied that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in the Police Rule 16.24 of Punjab Police Rules, 1934, terrorists or their supporters may cause bodily harm to the Enquiry Officer or the witnesses.

Now, therefore, I S.C Jain, Indian Penal Code, Senior Superintendent of Police, Hoshiarpur, in exercise of my powers vested in me by virtue of proviso to Article 312(2)(b) of the Constitution of India read with PPR 16.1, I do hereby dismiss 1. Darshanjit Singh".

Factually, the allegations made against the petitioner for dismissing him from service is that he had got links with Sikh extremists and hence is unsuitable to be retained in disciplined force of police.

8. There is no gain saying that the order of dismissal was passed on 9.7.1986 when a letter was addressed by Superintendent of Police (J) dated 19.6.1986 informing Senior Superintendent of Police, Gurdaspur that the petitioner is suspected to have links with Sikh extremists, in view of the facts stated in the said letter. He further conveyed that Director General of Police had ordered that petitioner be dismissed from service under Article 311 of

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the Constitution of India and further to be detained under NSA. It is not disputed that the District Magistrate, Gurdaspur, came to the conclusion that there is no material on record to detain the petitioner under the NSA. Except a bare letter from the office of the Director General of Police, there is not an iota of material or events by reference to which, it could have been reasonably attributed to the petitioner that he had links with the terrorists. In the course of arguments an attempt was made to point out that there was a statement of Tarsem Singh Kohar, recorded by the C.I.A. Inspector, (during his investigation that he had been visiting Qadian where Darshanjit Singh was posted as Station House Officer. In spite of a number of adjournments given, no such statement was brought to our notice nor any such statement was before the disciplinary authority while coming to the subjective satisfaction of the necessity of dispensing with the enquiry under Article 311(2)(b) of the Constitution.

9. In our considered view, there is nothing on record from which one can come to the conclusion that holding of an enquiry is or was not practicable. Even the charge of petitioner having links with the extremists is too vague particularly in view of the service record of the petitioner prior to his dismissal whereby commendation certificates were issued for the courageous acts performed by the petitioner in curbing the terrorists activities. Mere reproduction of the words of the statute are not sufficient to justify the finding of fact with respect to the satisfaction of the authority concerned. We find no reasons either recorded on the file or on the other itself, on scrutiny of which, one could have come to a conclusion that the appointing authority had come to the subjective

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satisfaction for dispensing with the enquiry. In view of facts and circumstances, observed above, it can be reasonably inferred that the appointing authority was prima facie influenced by the letter addressed from the DGP office, ordering dismissal of the petitioner. The enquiry against the petitioner appears to have been dispensed with on excusals. The appointing authority has given his conclusion for dispensing with the enquiry but has not stated any reason for coming to such a conclusion. Nothing has been pointed out as to what impelled the appointing authority to come to a conclusion with respect to impracticability of holding an enquiry or even simply giving a show cause notice to the petitioner for his having links with undesirable elements and calling for his explanation which might have satisfied the appointing authority with respect to the defence of the petitioner. The cardinal principles of natural justice cannot be dispensed with on mere pretexts real or imaginary.

10. In the light of the documents placed on record before us we are of the considered view that there was no material before the authorities to come to a conclusion regarding the non-practicability of holding the enquiry or any material connecting petitioner's assumed links with the terrorists.

11. A perusal of the order of the appointing authority would show that some statement of Tarsem Singh Kohar to the effect that he used to visit Qadian was taken into consideration but even this statement would not lead to an inference that Darshanjit Singh petitioner did not make any effort to arrest him. Even the allegation that one Pehalwan was rounded up who was released later on and though it was attributed that Tarsem Singh Kohar got him released from the petitioner, does not lead to an inference

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that the petitioner had links with the extremists. These are mere allegations which are not supported by any material on record. Even the statement of Tarsem Singh Kohar is not on record. Thus, the appointing authority or the appellate authority never had an opportunity to read the statement of Tarsem. Singh Kohar. There is nothing on the record what the said Tarsem Singh stated and in what context it was stated by him. In the absence of any material, it would be too much to infer that mere allegations of the facts, would be deemed to be proved facts.

12. In view of the findings returned above, we need not deal with the other submissions made by the learned counsel for the petitioner. The order of dismissal on the face of it, having been passed under the orders of the Director General of Police, without application of independent mind or satisfaction of the appointing authority, cannot be sustained. Thus the orders Annexures P-3, P-8 and P-10 are hereby quashed. This writ petition is accordingly allowed and the respondents are directed to reinstate the petitioner with all other consequential reliefs including the back wages. There would be no order as to costs. The respondents would, however, be at liberty to proceed against the petitioner afresh in accordance with law.”

Learned Single Judge of this Court in **Harjit Singh** (supra) has held that mere registration of FIR is no ground to invoke the provisions of Article 311(2)(b) of the Constitution of India. In the said judgment it has been held as under: -

“6. Mere registration of an FIR would not be a sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental inquiry

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*while dismissing a delinquent employee. In case of conviction, the situation is altogether different as has been specified in Article 311 (2) (a) of the Constitution of India. As noticed above, adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental inquiry. In the judgment rendered by this Court in **CWP 13847 of 1995 titled Constable Harinder Kumar v. State of Punjab and another decided on 24.10.2013**, the delinquent was dismissed from service on registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 without holding any departmental inquiry on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, therefore he was not fit to be retained in the police force. It was held that mere registration of FIR is not a valid ground to dispense with holding a regular inquiry.”*

13. It is apparent that no reasons whatsoever have been recorded by the competent authority in the impugned order to show as to why it was not practicable to hold an enquiry. Mere registration of an FIR would not be a sufficient ground to invoke Article 311(2)(b) of the Constitution of India to dispense with holding of a departmental enquiry while dismissing a delinquent employee. The appellate Court has failed to consider that adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental enquiry. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution of India would include an opportunity to defend himself and establish his innocence by cross-

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examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. The appellant could do this only if enquiry would have been held where he was to be informed of the charges levelled against him. However, in the instant case the mandate of Article 311(2) of the Constitution of India has been violated, depriving reasonable opportunity of being heard to the appellant. Nothing has been pointed out as to what impelled the punishing authority to come to a conclusion with respect to impracticability of holding an enquiry or even simply giving a show-cause notice to the appellant. Punishing authority statutorily as well as on the pedestal of principles of natural justice, is bound to follow cardinal principles of natural justice, which cannot be dispensed with merely on one pretext or the other. It cannot be lost sight of the fact that when right of defending himself in a departmental enquiry is lost to a delinquent, duty of punishing authority becomes even further onerous to strictly follow the legal mandate while justifying dispensing with regular departmental enquiry. The Senior Superintendent of Police, Kapurthala, was bound to refer the case of the appellant to the District Magistrate, who after a preliminary enquiry, was to decide whether departmental enquiry should have been held against him or criminal prosecution should have been launched. Only a message from the Superintendent of Police, Durg, Madhya Pradesh, to the Senior Superintendent of Police, Kapurthala, that the appellant has been arrested in a criminal case, does not justify that no enquiry was required to be held against the appellant. Thus, there is nothing on record to

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show that the punishing authority was satisfied that it was not practicable to hold enquiry against the appellant. In the considered view of this Court, there is nothing on record from which it can be concluded that holding of an enquiry is or was not practicable. Even the appellant was acquitted in the cases registered against him at Durg, Madhya Pradesh.

Furthermore, in the order of dismissal dated 16.06.1987, it is stated by the punishing authority that ‘.....*I am satisfied that in the interest of the security of the State of Punjab, it is not expedient to hold an enquiry against the aforesaid Constable Bhupinder Singh No.336/KPT as required by clause (2) of Article 311 of the Constitution of India for his removal from Govt. service. Now, therefore, in exercise of the powers vested in me by virtue of Punjab Police Rules 16.1 read with Article 311(2)(b) of the Constitution of India, I, K.L. Lekhi, IPS, Superintendent of Police, do hereby remove the aforesaid Constable Bhupinder Singh No.336/KPT from Govt. Service of the Police Deptt. with immediate effect.*’ The said order is patently illegal for the reason that if it was a case of dispensing with the enquiry in the interest of the security of the State, the order should have been passed under Article 311(2)(c), however, the powers have been invoked by the punishing authority under Article 311(2)(b) of the Constitution of India, which also shows that there is no proper application of mind on the part of the punishing authority while dispensing with the enquiry.

14. Both the Courts have concurrently held that the suit filed by the plaintiff was within limitation as the order of dismissal from

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service was never conveyed to the appellant-plaintiff and after acquittal in the criminal cases when he came to know about his dismissal from service, he immediately filed the suit. The said finding has not been questioned by the State of Punjab by filing any appeal or cross-objections in the present appeal.

15. During the course of hearing, it has been pointed out that appellant-plaintiff has attained the age of superannuation during the pendency of the appeal. Therefore, in this view of the matter, it would not be useful to remand back the case of the appellant to the respondents to hold an enquiry and pass consequential orders.

16. In view of the above, the question of law is answered in favour of the appellant-plaintiff. Consequently, the present appeal is allowed. Judgment and decree of the first appellate Court is set aside and that of the trial Court is restored. It is accordingly ordered that appellant is deemed to have been reinstated in service w.e.f. 16.06.1987 and is entitled for 50% back wages. Decree-sheet be prepared accordingly.

17. Pending application(s), if any, shall also stand disposed of.

07.03.2026
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No