

*Before Tejinder Singh Dhindsa, J.*

**GURCHARAN SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No.12960 OF 2010**

9th January, 2013

*Constitution of India, 1950 - Arts. 226, 227 & 311 (2) (b) - Punjab Police Rules - RL 16.1 - Police Act, 1861 - S. 7 - Petitioner/ Head Constable was found mixed up with notorious robbers and a chain snatcher gang - SSP imposed the penalty of dismissal from service by invoking Article 311(2)(b) and dispensed with regular departmental inquiry - Dismissal order upheld in appeal and revision - Challenge thereto - In writ dismissal order set aside holding that competent authority has exercised power under Article 311(2)(b) without jurisdiction - No material on record on which a view could not be taken that an enquiry will not be reasonably practicable to hold - No material before punishing Authority to come to conclusion for dispensing with formal enquiry - Petition allowed.*

*Held*, that there was no material before the S.S.P., Amritsar on the basis of which an opinion had been formed to dispense with the inquiry. A perusal of the impugned order passed by the appellate authority as also the revisional authority would also reveal that the crucial issues as regards the S.S.P., Amritsar having correctly arrived at the conclusion of dispensing with an inquiry and as to whether the facts and circumstances of the case depicted a sufficient basis for dispensing with a formal inquiry has not even been gone into.

(Para 10)

*Further held*, that in view of the facts noticed and the discussion herein above, this Court has no hesitation in holding that the competent authority while passing the impugned order dated 19.07.2007 (Annexure P-2) has without any jurisdiction exercised the power under Article 311 (2)

(b) to dispense with the regular department inquiry. There was no material on the basis of which a view could be taken for such an inquiry to be not reasonably practicable to hold and accordingly, no reasons to justify such opinion were recorded. The impugned order dated 19.7.2007 (Annexure P-2) cannot be sustained and the same is quashed. As the basic order imposing the penalty of dismissal dated 19.7.2007 passed by the S.S.P., Amritsar (City) has been set aside even the consequential orders dated 30.1.2008 (Annexure P-4) passed by the appellate authority and order dated 24.7.2008 (Annexure P-6) passed by the revisional authority cannot be sustained and the same are also set aside. The petitioner is directed to be reinstated in service. The respondents, however, are not precluded from initiating a departmental inquiry against the petitioner strictly in accordance with law. The payment of back wages shall depend on the result of such inquiry. It is clarified that an inquiry, if, contemplated must be initiated as expeditiously as possible and not later than two months from the date of receipt of a certified copy of this order.

(Para 13)

Girish Agnihotri, Sr. Advocate with Arvind Seth, Advocate, *for the petitioner.*

Sudeepti Sharma, D.A.G., Punjab.

**TEJINDER SINGH DHINDSA, J.**

(1) The challenge in the instant writ petition is to the order dated 19.7.2007 passed by the S.S.P., Amritsar (City), whereby the petitioner, who was holding the post of Head Constable has been imposed the penalty of dismissal from service in terms of invoking the power under Article 311 (2) (b) of the Constitution of India and dispensing with a regular departmental inquiry. Further challenge is to the order dated 30.1.2008 (Annexure P-4) as also order dated 24.7.2008 (Annexure P-6), whereby the appellate and revisional authorities have upheld the initial order of imposition of the extreme penalty of dismissal from service upon the petitioner.

(2) Brief facts of the case are that the petitioner initially joined service with the Punjab Police as Constable on 5.4.1985. In the year 1989 the petitioner was promoted to the post of Head Constable and subsequently

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on 1.7.1995 he was confirmed upon such post. It has been pleaded that without issuance of any show cause notice or grant of an opportunity of hearing the impugned order dated 19.7.2007 has been passed by the S.S.P., Amritsar City reciting that it has been found that the petitioner was mixed up with notorious robbers and a chain snatchers gang and was mixed up with certain bad elements by providing them protection by using his influence of being a member of the police force and had even received cash/robbed valuable ornaments from the gang. The impugned order has been passed in terms of the power conferred under Article 311 (2) (b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules and Section 7 of the Police Act, 1861 in terms of holding that it is not reasonably practicable to hold a departmental inquiry as nobody would come forward to depose against him on account of fear of the bad elements and accordingly, dispensing with the same. An appeal preferred against such order has been rejected by the D.I.G., Border Range, Amritsar vide order dated 30.1.2008 and even an appeal-cum-revision petition has been dismissed by the Inspector General of Police, Border, Amritsar vide order dated 24.7.2008. It is against such factual backdrop that the present writ petition has been filed.

(3) Learned senior counsel appearing for the petitioner has assailed the impugned orders primarily on the ground that there was no material before the competent authority which would justify the dispensing with a regular departmental inquiry and as such there has been a complete negation of the principles of natural justice. Counsel would further argue that there has been a total non-application of mind inasmuch as the competent authority has not even recorded in the impugned order or has referred to any document through which it could be discerned that any verification of the facts has been carried out while recording that the petitioner allegedly had links with the robbers/chain snatchers gang/bad elements. Learned senior counsel has further raised a submission that the authority while passing the impugned order has not given the due regard to the 22 years of unblemished service that the petitioner possessed. Furthermore, malafides have been attributed to respondent no.4 i.e the S.S.P., Amritsar, who has been impleaded by name and assertions have been raised in the petition as regards the vindictive attitude adopted by such official which has finally led to the passing of the impugned order.

(4) Per contra, learned State counsel would refer to the reply filed on behalf of respondents no.1 to 3 to submit that it was as per report submitted by the S.S.P., City-1, Amritsar vide memo dated 17.7.2007 that a gang of snatchers was caught in the area of Police Station B Division, Amritsar and a large amount of gold jewellery allegedly robbed, had been recovered from the gang and F.I.R No. 129 dated 10.7.2007 under Sections 382/392/411 I.P.C and Section 25 of the Arms Act had been lodged at Police Station B Division, Amritsar against five members of the gang namely Punit Pal Singh son of Jaswinder Singh, Smt. Manjit Kaur wife of Charanjit Singh, Balwinder Singh son of Bakshish Singh, Charanjit Kaur and Tilak Raj son of Bua Ram. Learned State counsel would submit that it was upon the disclosure of such aforesaid members of the gang that it was found that the petitioner was involved alongside and had been providing them protection by using his influence and had received cash and other stolen/robbed ornaments. It has been contended on behalf of the State that it is under such circumstances that the provisions of Article 311 (2) (b) of the Constitution of India have been invoked to hold that it was not reasonably practicable to hold the departmental inquiry and accordingly, the same was dispensed with and the petitioner was imposed the penalty of dismissal.

(5) Learned counsel for the parties have been heard at length.

(6) It is not in dispute before this Court that in awarding the punishment of dismissal from service upon the petitioner no formal inquiry was held purportedly on the ground that the same could be dispensed with under proviso (b) appended to clause (2) of Article 311 of the Constitution of India which reads in the following terms:-

**“ 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**

*(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

*(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.*
- (3) *If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."*

(7) The scope of Article 311 (2) (b) came to be dealt with by the Hon'ble Apex Court in case of **Jaswant Singh versus State of Punjab (1)** and it was held as follows:-

*"The decision to dispense with the departmental inquiry cannot be rested solely on the ipse dixit of the concerned authorities. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome*

*of the whom and caprice of the concerned officer. In the instant case it was alleged that the delinquent police officer instead of replying to show cause notice instigated his fellow police officials to disobey the superiors. It is also alleged that he threw threats to beat up the witnesses and the Inquiry Officer, if any departmental inquiry was held against him. No particulars were given. It was not shown on what material the concerned authorities had come to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings "with other police officials with a view to spread hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of information leading to the said allegation."*

(8) It is well settled that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid of holding of an inquiry. Learned senior counsel appearing for the petitioner would even refer to the decision dated 31.7.2012 passed by the court of JMIC, Amritsar (placed on record as Annexure P-7) in Criminal Case No.27.9.12 (date of institution 4.5.2009/21.5.2012) in State Vs. (1) Puneetpal Singh (2) Manjit Kaur (3) Balwinder Singh @Tori (4) Charanjit Kaur @ Ghuka (5) Tilak Raj in FIR No. 129 dated 10.7.2007 to submit that even the so called members of the gang upon whose purported disclosure the impugned order has been passed already stand acquitted. However, it may not be necessary for this Court to examine such submissions in detail.

(9) As has already been noticed, the formal inquiry was dispensed with in terms of passing of the impugned order dated 19.7.2007 (Annexure P-2) passed by the S.S.P., Amritsar only on the ground that nobody would depose against the petitioner on account of fear from the bad elements. No material has been placed or disclosed either in the impugned order or before this Court to demonstrate that the subjective satisfaction arrived at by the S.S.P., Amritsar was based upon certain objective criteria. The purported reason for dispensing with the departmental proceedings is not supported

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by any document. A close scrutiny of the impugned order dated 19.7.2007 (Annexure P-2) would reveal that while forming an opinion that it was not reasonably practicable to hold a departmental inquiry against the petitioner, it had been recorded that the same is being dispensed with for **reasons that have been recorded separately**. This Court on 2.11.2012 had passed a specific order while adjourning the matter to 5.12.2012 for the original record to be produced so as to ascertain as to what were the reasons compelling the competent authority not to hold the regular departmental inquiry against the petitioner prior to imposition of a major penalty. The original records pertaining to the case were produced by the learned State counsel on 11.12.2012. A perusal of the same would reveal that the only reasons that were recorded separately by the S.S.P., Amritsar on 19.7.2007 were to the following effect:-

*“After careful consideration of all the facts and circumstances and after due application of mind, H.C (ORP ASI) Gurcharan Singh is hereby dismissed from the service under Article 311 (2) (b).”*

(10) It is apparent that there was no material before the S.S.P., Amritsar on the basis of which an opinion had been formed to dispense with the inquiry. A perusal of the impugned order passed by the appellate authority as also the revisional authority would also reveal that the crucial issue as regards the S.S.P., Amritsar having correctly arrived at the conclusion of dispensing with an inquiry and as to whether the facts and circumstances of the case depicted a sufficient basis for dispensing with a formal inquiry has not even been gone into. The D.I.G., Border Range, Amritsar while rejecting the appeal vide order dated 30.1.2008 has observed as follows:-

*“ I have well considered the appeal, the relevant record and found that there is sufficient material/evidence on record to prove the allegations levelled against him. By indulging in nefarious activities and having links with the bad elements, he had lowered the image and dignity of the police in the eyes of public as he was supposed to deal with the bad elements with firm hand, but he had established his links with such ill-reputed persons for vested interests. He has also been heard personally by the undersigned, but I*

*find no substance in his version. He has rightly been dismissed from service by the Punishing Authority and the order of punishment is legal, valid and operative. Therefore, the appeal is considered and rejected being devoid of force."*

(11) Likewise, even the revisional authority i.e. the Inspector General of Police, Border Range, Amritsar while passing the impugned order dated 24.7.2008 furnished the following reasoning:-

*"I have carefully gone through the relevant record as well as pleas taken by the revisionist and from that the revisionist was indulged in nefarious activities and having links with bad elements. His act has tarnish the image of the whole police department and his continuous in police force is most undesirable at public expenses and to the public detriments. Departmental enquiry not conducted as SSP, Amritsar (City) was satisfied to dispense with the departmental enquiry under Article 311 (2) (b) of the Constitution of India. There is no substance in the revision petition. Hence the same is rejected being devoid of any force on merit."*

(12) Suffice it to notice that both the orders passed by the appellate authority as well as revisional authority are cryptic and do not even address the basic issue as regards the justification for having dispensed with a regular departmental inquiry. Such aspect has also been considered by the Hon'ble Apex Court in **Jaswant Singh's** case (supra), wherein noticing an earlier judgement of a Constitution Bench in case of **Union of India versus Tulsi Ram Patel (2)**, it was held as follows:-

*"Although clause (3) of that Article makes the decision of the disciplinary authority in this behalf final, such finality can certainly be tested in a Court of Law and interfered with, if, the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry."*

(13) In view of the facts noticed and the discussion herein above, this Court has no hesitation in holding that the competent authority while



passing the impugned order dated 19.7.2007 (Annexure P-2) has without any justification exercised the power under Article 311 (2) (b) to dispense with the regular departmental inquiry. There was no material on the basis of which a view could be taken for such an inquiry to be not reasonably practicable to hold and accordingly, no reasons to justify such opinion were recorded. The impugned order dated 19.7.2007 (Annexure P-2) cannot be sustained and the same is quashed. As the basic order imposing the penalty of dismissal dated 19.7.2007 passed by the S.S.P., Amritsar (City) has been set aside even the consequential orders dated 30.1.2008 (Annexure P-4) passed by the appellate authority and order dated 24.7.2008 (Annexure P-6) passed by the revisional authority cannot be sustained and the same are also set aside. The petitioner is directed to be reinstated in service. The respondents, however, are not precluded from initiating a departmental inquiry against the petitioner strictly in accordance with law. The payment of back wages shall depend on the result of such inquiry. It is clarified that an inquiry, if, contemplated must be initiated as expeditiously as possible and not later than two months from the date of receipt of a certified copy of this order.

(14) Petition allowed in the aforesaid terms.

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*A. Jain*