
(2011) 12 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3117 of 2010 (O and M)

Ex-EHC Chhaju Ram

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(1), 311(2), 311(2)(b)
Penal Code, 1860 (IPC) — Section 120B, 149, 186, 224, 225

Citation : (2011) 12 P&H CK 0032

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : R.K. Malik, with Ms. Renu Chaudhary, for the Appellant; Sunil Nehra, D.A.G. Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—The petitioner prays that Annexures P-2, P-4 and P-6 be quashed which have resulted in his dismissal from service.

The petitioner who enrolled as a Constable on 10.2.1988, was promoted as an Exemptee Head Constable in April, 2004. On 20.7.2008, the

petitioner faced suspension and a regular departmental enquiry was ordered against him. The charge against him was that he had displayed

negligence on duty while being assigned a duty as a Security Guard to an accused Surjit son of Ranbir who was facing allegations in F.I.R. No.

148 under Sections 392, 323, 353, 186, 307, 120-B I.P.C. and for the said negligence, F.I.R. No. 237 dated 20.7.2008 was registered against

the petitioner under Sections 224, 225, 120-B I.P.C. at Police Station City, Narnaul. Vide the same order, it was proposed to hold a regular

departmental enquiry against him.

2. On 24.7.2008, Annexure P-2, the order which encompasses the primary grievance of the petitioner, was passed. In this order, the details of his negligence were given which established that he was having an unholy connection with a dreaded criminal who was in custody and who was permitted to use the mobile phone of the petitioner when he was guarding him. This resulted in the said criminal escaping from police custody from the General Hospital, Narnaul on 19/20.7.2008. Since this had transpired when the petitioner was on guard duty, the Superintendent of Police decided to invoke the provisions of Article 311(2)(b) of the Constitution of India and while dispensing with a regular enquiry, dismissed the petitioner from service. By virtue of the subsequent orders Annexures P-4 and P-6, the order of the S.P. Narnaul has been upheld.

3. The solitary contention that has been raised by the learned counsel for the petitioner is that by virtue of Annexure P-1, a regular departmental enquiry was proposed against the petitioner on 20.7.2008 and 4 days thereafter Annexure P-2 was passed dispensing with such a regular enquiry by invoking Article 311(2) (b) of the Constitution of India. This, according to the learned counsel for the petitioner, could not have been done, as once the decision to conduct an enquiry had been taken, there was no occasion for the respondents to dispense with the enquiry.

4. In support of his contention, the learned counsel for the petitioner has placed reliance on a judgment of this Court in Sangram Singh v. State of Punjab 1995(3) R.S.J. 161, wherein this Court observed as follows :-

5. The only point which requires adjudication is as to whether the order of dismissal passed by respondent No. 3 by invoking proviso (b) to Article 311(2) of the Constitution of India is legal or not. Article 311 of the Constitution reads as under :-

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

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry 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 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 enquiry.

(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.

6. Article 311(1) is couched in negative form and it protects the holder of civil post against dismissal or removal from service by an authority who

is subordinate to the authority that appointed him. Article 311(1) is also couched in negative form and lays down that a member of civil service

cannot be dismissed or removed from service without an enquiry and without a reasonable opportunity of hearing to him. Clauses (a) to (c)

contained in the second proviso to Article 311(2) will not be necessary 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. Clauses (b) and (c) empower the competent authority and the President or

Governor, as the case may be, to impose the penalty of dismissal or removal if it is satisfied that it is not reasonably practicable to do so or where it

is not expedient to hold such enquiry in the interest of the security of the State. Being in the nature of exceptions to the general rule, these clauses

have to be construed strictly and when order for dismissal or removal from

service passed under any of these three clauses is challenged in a court

of law, it has to be shown that the conditions for exercise of the power under clauses (a), (b) or (c) did exist.

5. Likewise, a Division Bench of this Court in *Lalji Dass, Ex-Constable v. State of Punjab and others* 1996(1) R.S.J. 285, observed as follows :-

9. From the close reading of Article 311(2), it cannot be denied that a Government employee cannot be dismissed from service without holding an enquiry and affording an opportunity of hearing. However, clauses (b) and (c) of Article 311(2), give ample power to the authority empowered or

the President or the Governor to impose penalty of dismissal, if it is satisfied that it is not practicable to hold enquiry. The order of dismissal or

removal from service can be passed under any of the three clauses.

6. On due consideration of the proposition that has been raised before this Court, I am of the opinion that the contention raised by the learned

counsel for the petitioner needs to be negated for the following reasons :-

The Hon'ble Supreme Court in *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, , while observing in relation to Article 311(2)(b),

has held that it is not necessary that a situation which makes holding of the enquiry not reasonably practicable, should exist before the disciplinary

enquiry is initiated, because the situation which renders the holding of enquiry not reasonably practicable, can come into being even during the

course of enquiry. The extract of the observations which is relevant to the controversy, is as follows :-

XI. Clause (b) of the Second Proviso

(55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311 (2) can be applied. These

conditions are :

(i) there must exist a situation which makes the holding of an enquiry contemplated by Article 311(2) not reasonably practicable, and

(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such enquiry.

(56) Whether it was practicable to hold the enquiry or not must be judged in the context of whether it was reasonably practicable to do so.

(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the

enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(58) The reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the case in which it would not be reasonably practicable to hold the enquiry. Illustrative cases would be-

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give

evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary

authority or members of his family so that he is afraid to hold the enquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant

is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual

may not.

(60) The 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 enquiry or because the Department's case against the civil servant is weak and must fail.

(61) The word "inquiry" in clause (b) of the second proviso includes a part of an inquiry. It is, therefore, not necessary that the situation which

makes the holding of an enquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can

also come into existence subsequently during the course of the enquiry, for instance, after the service of a charge sheet upon the civil servant or

after he has filed his written statement thereto or even after evidence has been led in part.

(62) It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when

at the commencement of the enquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such

cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

(63) The recording of the reason for dispensing with the enquiry is a condition precedent to the application of clause (b) of the second proviso.

This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the enquiry and the order of penalty

following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but

it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the

final order but was subsequently fabricated.

(64) The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of

clause (b) of the second proviso.

(65) It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so

in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.

(66) The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority

may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and

capacity of that officer for the purposes of promotion etc.

(67) It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry

because such communication would eliminate the possibility of an allegation being made that the reason had been subsequently fabricated. It would

also enable the civil servant to approach the High Court under Article 226, or, in a fit case, the Supreme Court under Article 32.

7. Likewise, in Shivaji Atmaji Sawant Vs. State of Maharashtra and Others, , the Hon"ble Supreme Court observed as follows :-

7. Three contentions were urged on behalf of Sawant in order to substantiate the contentions that the impugned order of dismissal passed against him was without any application of mind. The first contention was that Sawant was arrested in the early hours of August 18, 1982 and, therefore, did not and could not have taken part in the incidents of violence, arson, looting and mutiny which took place on and from that date. Assuming it is so, Sawant is alleged to have been one of the active instigators and leaders who were responsible for the creation of such a serious situation which rendered all normal functioning of the Police Force and normal life in the City of Bombay impossible. As opined out by this Court in *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, it is not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before taking action under clause (b) of the second proviso to Article 311(2). A person who incites others to commit violence is as guilty, if not more so, than the one who indulges in violence, for the one who indulges in violence may not have done so without the instigation of the other. The second contention was that identical orders were passed against forty-three other members of the constabulary and that all these orders, including the one served upon Sawant, were cyclostyled. Where several cyclostyled orders are passed, it would prima facie show non-application of mind but this is not a universal-rule and would depend upon the facts and circumstances of each case. In *Union of India and Another Vs. Tulsiram Patel and Others*, cyclostyled orders were served upon several members of the Unit of the Central Industrial Security Force posted at Bokaro with the names of the individual members filled in. Rejecting a similar contention raised in that case, this Court observed (at page 520 of SCC) : (at p.1490 of AIR) :

It was said that the impugned orders did not set out the particular acts done by each of the members of the CIS Force in respect of whom dismissal order was made, and these were merely cyclostyled orders with the names of individual members of the CIS Force filled in. Here was a case very much like a case u/s 149 of the Indian Penal Code. The acts alleged were not of any particular individual acting by himself. These were acts of a large group acting collectively with the common object of coercing those in charge of the administration of the CIS Force and the

Government in order to obtain recognition for their association and to concede their demands. It is not possible in a situation such as this to

particularize the acts of each individual member who participated in the commission of these acts. The participation of each individual may be of

greater or lesser degree but the acts of each individual-contributed to the creation of a situation in which a security force itself became a security risk.

The third contention was that the reasons for dispensing with the enquiry did not accompany the order. In Tulsiram Patel's case this Court held that

the recording of the reason of dispensing with the enquiry is a condition precedent to the application of clause (b) of the second proviso and if such

reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and

unconstitutional. The Court also held that though it was not necessary that the reasons should find a place in the final order imposing penalty, it

would be advisable to record them in the final order so as to avoid an allegation that the reasons were not recorded in writing before passing the

final order but were subsequently fabricated. What had happened in Sawant's case was that either along with the order or soon thereafter, reasons

in writing for dispensing with the enquiry were served upon Sawant. A perusal of the reasons shows that they were recorded later. Were the

impugned order of dismissal one which merely imposed a penalty, it would have been bad and would require to be struck down in view of the

decisions in Tulsiram Patel's case. The position is, however, different. The impugned order of dismissal itself sets out the reasons why it was not

reasonably practicable to hold the inquiry. It is stated in the said order that some members of the Bombay City Police Force, including Sawant,

had been instigating others to indulge in acts of insubordination and indiscipline and were instigating them to withdraw from their lawful duties,

inciting them to violence and mutiny, joining rioting mobs and participating in arson, looting and other criminal acts and were willfully disobeying

orders of their superior officers and that these acts had created a situation whereby the normal functioning of the force in Bombay had been

rendered difficult and impossible, and that in view of these facts and circumstances, any attempt to hold a departmental inquiry by serving a written

charge-sheet and following the procedure laid down in the Bombay Police (Punishment and Appeals) Rules, 1956, would be frustrated by the

collective action of those persons and it was, therefore, not practicable to hold such an inquiry. The ""reasons"" served separately merely amplified

and elaborated what had been stated in the impugned order. There is thus no substance in any of the contentions advanced in the case of Sawant

and it must be held that clause (b) of the second proviso to Article 311(2) was rightly applied in his case.

8. A perusal of Article 311(2)(b) of the Constitution leaves no room for doubt that the competent authority can dispense with the enquiry before

imposing a punishment of dismissal upon a public servant provided reasons are recorded for such a satisfaction. The Hon''ble Supreme Court in

Union Territory, Chandigarh and Others Vs. Mohinder Singh, and this High Court in Ex-Constable Ranbir Singh v. State of Punjab 2003(3) SCT

852, as well as in Surinder Singh v. State of Haryana 2009 (4) SCT 803, have consistently held to this effect. There is thus, no ambiguity in so far

as the exercise of power is concerned, subject to the condition that sufficient reasons and subjective satisfaction of the authority are manifested in

the order by which such an enquiry is dispensed with or even in the order of dismissal as has been observed by the Hon''ble Supreme Court in

Shivaji Atmaji Sawant v. State of Maharashtra and others (supra).

9. If the facts of the case are to be seen, by virtue of Annexure P-2 vide which the petitioner was awarded the punishment of dismissal from

service, contains sufficient reasons to arrive at a conclusion to dispense with the enquiry. The relevant extract of the impugned order Annexure P-2

is as below :-

EHC Chhaju Ram No. 168/NNL and EHC Raj Pal No. 271/NNL were deputed to bring convict Surjit Singh son of Ranvir Jat r/o 8 Biswa

Gurgaon from District Jail Nasibpur to General Hospital Narnaul for his treatment on 19.7.2008. Where convict Surjit Singh was admitted in

General Hospital, Narnaul by the doctor. CHC Chhaju Ram provided his mobile phone No. 9416162381 to convict Surjit Singh, who used this

mobile phone frequently 7 times for outgoing and one time for incoming. In this way he made calls for Mobile Phone No. 9416162831 (owned by

EHC Chhaju Ram) on Mobile No. 09873908387 owned by his known/relative and

made a plan to run away from police custody. With the help of EHC Chhaju Ram, the dreaded criminal Surjit Singh succeeded in his plan and ran away from police custody from General Hospital Narnaul on

19/20.7.2008. It proves that EHC Chhaju Ram has helped the convict to run away and he was involved in this plan. In this regard cases FIR No.

237 dated 20.7.2008 u/s 224/225/120-B IPC has been registered at Police Station City, Narnaul.

Hence, EHC Chhaju Ram has been found abetting the dreaded criminal Surjit Singh son of Ranvir Jat r/o 8 Biswa, Gurgaon to escape from

General Hospital Narnaul on 19/20.7.2008 who was in police custody. Hence, EHC Chhaju Ram No. 168/NNL is usually unreliable and is fully

unfit to be a good police officer. It will be not justified to allow EHC Chhaju Ram to remain more in the department.

Keeping in view the above circumstances, I Y. Puran Kumar, IPS, Superintendent of Police Narnaul, in exercise of the powers conferred under

Article 311(2)(b) of the Constitution of India, hereby order the dismissal of EHC Chhaju Ram No. 168/NNL with immediate effect. A copy of this

order be delivered to EHC Chhaju Ram No. 168/NNL free of cost.

10. The Hon"ble Supreme Court in Satyavir Singh's case (supra) while dilating on the issue, has considered one of the illustrations whether the

dispensation of enquiry would be a feasible course and this illustration alludes to a situation as follows :-

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant

is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual

may not.

And further that it is the disciplinary authority which is aware of the ground realities prevailing and is the best judge to decide whether an enquiry is

feasible or not.

11. In the opinion of this Court, the petitioner who was guarding a criminal involved in an offence u/s 392 I.P.C., while permitting him to use the

telephone so as to weave a conspiracy to ensure his escape, has indulged in an act of general indiscipline and if permitted to remain in service,

would be responsible in sending a negative and a subversive message to the

members of the Armed Forces.

12. I am thus, satisfied that the respondents justifiably invoked the power under Article 311(2)(b) of the Constitution of India and merely because

a decision had been taken earlier to hold an enquiry, would not ipso facto mean that the subsequent decision to dispense with the enquiry could not

have been taken by the competent authority as has also been observed by the Hon"ble Supreme Court in *Satyavir Singh and others v. The Union*

of India and others (*supra*). For the aforesaid reasons, the writ petition is held to be without any merit and is dismissed.