
(2010) 02 P&H CK 0168
In the Punjab And Haryana At Chandigarh

Mohinder Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Citation : (2010) 02 P&H CK 0168

Hon'ble Judges : Alok Singh, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Alok Singh, J.

C.M. No. 2385 of 2009

1. For the reasons mentioned in the application, delay of 63 days in filing the LPA is condoned.

LPA No. 887 of 2009

1. Writ petitioner/appellant is assailing the order dated 10.3.2009 passed by learned Single Judge, thereby dismissing the writ petition, by way of present LPA.

2. The brief facts of the present case are that petitioner joined the service as a Constable in the year 1955 and after earning promotions, he was promoted as Sub Inspector in the year 1966. When he was posted in Amritsar, he was dismissed from the service vide order dated 14.7.1987 passed by Sr. Superintendent of Police, Amritsar on the ground that S.I. Mohinder Singh has been reported to be mixed up with the extremist and had leaked out information of raid to some hardcore extremists. While passing the impugned order, thereby dismissing the petitioner/appellant from the services, it was observed that regular departmental enquiry as provided by PFR 16.24 is not reasonably practicable because witnesses are not likely to expose due to fear of injury to their lives. Learned Single Judge did not agree with the contention of the petitioner that order dismissing him was without giving an opportunity of hearing

and he was deprived to place his defence before the disciplinary authority.

3. We have heard learned Counsel for the parties and perused the record.

4. Learned Counsel for the petitioner/appellant has placed reliance on the judgment in the case of Darshan Jit Singh Dhindsa v. The State of Punjab and Ors. reported in 1993 (2) RSJ 650, wherein a Divisional Bench of this Court in paragraph 9 thereof have observed as under:

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's 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 the fact with respect to the satisfaction of the authority concerned. We find no reasons either recorded on the file or on the order itself, on scrutiny of which, one could have come to a conclusion that the appointing authority had come to the subjective satisfaction for dispensing with the enquiry. In view of the facts and circumstances, observed above, it can be reasonably inferred that the appointing authority was prima facie influenced by the letter addressed from the D.G.P. 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.

5. Learned Counsel for the petitioner/appellant has also placed reliance on the judgment of the Hon'ble Apex Court in the matter of Jaswant Singh v. State of Punjab and Ors. reported in AIR 1991 Supreme Court 385, wherein the Apex Court has observed as under:

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. 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 whim or caprice of the concerned officer. In the counter filed by the third respondent it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors.

6. Learned Counsel for the State has not been able to show any justification for

not holding enquiry. In these circumstances, dispensation of enquiry was not justified. However, it is not a case which calls for reinstatement straightway. Only relief which the appellant is entitled to is of opportunity of hearing in an enquiry.

7. Thus, present appeal is allowed. Impugned order dated 14.7.1987 dismissing the writ petitioner/appellant from the service and thereafter order of the Appellate Authority dated 18.11.1987 are quashed. Sr. Superintendent of Police, Amritsar is directed to pass fresh order after giving an opportunity of being heard to the petitioner/appellant in accordance with law within six months from the date of certified copy of this order will be placed before him. In case after enquiry, order of dismissal is reiterated, the appellant will not be entitled to any benefit. If after enquiry, he is held entitled to reinstatement, he will not be entitled to back wages but continuity of service and other terminal benefits in accordance with law, since by this time, he may have reached the age of superannuation.