***Before Daya Chaudhary, J.***

**BALKAR SINGH**—*Petitioner*

*versus*

**STATE OF PUNJAB AND OTHERS**—*Respondents*

**CWP No.17879 of 2014**

September 29, 2016

***Constitution of India, 1950—Arts. 226 and 227—Dismissal of government employee dispensing with departmental inquiry under Article 311(2) (b) of the Constitution without sufficient cause is untenable.***

*Held that*, an inquiry under Article 311(2)(b) of the Constitution of India is a rule and dispensing with the inquiry is an exception. This power is not to be exercised arbitrarily and out of ulterior motive. The competent authority is bound to follow the principles of natural justice and the normal procedure cannot be dispensed with only on the pretext that it is not practicably possible to hold departmental inquiry. In the pr'esent case, nowhere it has come on record that even any attempt was made to hold regular departmental inquiry by the appointing inquiry officer or any witness was not in a position to depose against the petitioner.

(Para 12)

V.K. Jindal, Sr. Advocate with Amandeep Sheoran, Advocate *for the petitioner.*

Avinit Avasthi, AAG, Punjab, for the respondents -State.

**DAYA CHAUDHARY, J.**

(1) The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing of order of dismissal dated 23.05.2014 (Annexure P-1) passed by respondent No.5 dispensing with departmental inquiry under Articles 311(2) (b)of Constitution of India and also order dated 23.07.2014 (Annexure P-2), whereby, the appeal filed by the petitioner has been rejected in violation of principles of natural justice.

(2) Briefly, the facts of the case as made out in the present writ petition are that the petitioner joined Police department as Constable

on 01.02.1989 and was promoted as Head Constable on 15.07.1993 on qualifying Lower School Course. Thereafter, he qualified the Intermediate School Course and was promoted as ASI on 13.09.2012. After his promotion as ASI, he was transferred from Tarn Taran to Shaheed Bhagat Singh Nagar. However, he was dismissed from service vide order dated 23.05.2014 by attracting provisions of Article 311(2)(b) of the Constitution of India by dispensing with the departmental inquiry. As per grounds mentioned in the impugned order, the petitioner was alleged to be indulging in criminal activities by misusing his official status. He was also found to be involved in heinous crime under the NDPS Act and receiving illegal gratification for extending favour to the smugglers. The impugned order of termination has been challenged in the present writ petition by raising various grounds.

(3) Learned senior counsel for the petitioner submits that the punishing authority has not applied its mind as without recording any reason, the departmental inquiry has been dispensed with under Article 311 (2)(b) of the Constitution of India. Even the appellate authority has also rejected the appeal without mentioning any reason. Learned counsel further submits that the work and conduct of the petitioner was satisfactory and no adverse remarks were ever conveyed to him. By considering his past record, the petitioner was promoted also. Learned counsel also submits that nothing has been mentioned as to how the petitioner was presumed to be involved in commission of serious offence or having links with criminals. There is no cogent material with the punishing authority to show that the petitioner has been indulging in any criminal activity earlier or at any point of time, no notice was taken with regard to his involvement. The impugned order was passed so hurriedly that the report, which was sought from Superintendent of Police (D), Tarn Taran by Senior Superintendent of Police, Tarn Taran, was sent to Senior Superintendent of Police, Shaheed Bhagat Singh Nagar on the same day relying on which, the impugned order of dismissal was also passed on the same day. Learned counsel also submits that it has been mentioned in the impugned order that it is not reasonably practicable to hold a regular departmental inquiry against the petitioner as it is very difficult to find out the involvement of the petitioner with well known criminals. Learned counsel for the petitioner has also relied upon judgments rendered by Hon'ble the Supreme Court in ***Jaswant Singh*** *versus* ***State of Punjab***

***and others***[1]***, Sudesh Kumar*** *versus* ***State of Haryana and Ors.***[2] as well as judgments of this Court in ***Ramesh Chand*** *versus* ***State of Punjab and others***[3]***, Gurcharan Singh*** *versus* ***State of Punjab and others***[4]***, State of Punjab and others*** *versus* ***Dalbir Singh***[5]***, Lalji Dass*** *versus* ***State of Punjab and others***[6]***, Smt. Surinder Kaur wd/o Sh. Labh Singh*** *versus* ***State of Punjab through Director General of Police, Chandigarh***[7]***, Swaran Singh and others*** *versus* ***State of Punjab and others***[8]*,* ***Gurmit Singh*** *versus* ***State of Punjab and others***[9]*,* ***Raj Pal*** *versus* ***State of Haryana and others***[10]*,* ***Narinder Kumar*** *versus* ***State of Haryana and others***[11]*,* ***Virender Singh*** *versus* ***State of Haryana and others***[12]*,* ***Bikram Singh*** *versus* ***State of Punjab and others***[13]*,* ***Ex. Constable Malkiat Singh*** *versus* ***State of Punjab and others***[14]*,* ***Dhan Singh*** *versus* ***State of Haryana and others***[15]*,* ***State of Haryana and Ors.*** *versus* ***Jai Dev***[16]and ***Randhir Singh*** *versus* ***Dy. Inspector General of Police, Ambala Range, Ambala Cantt. and another***[17]in support of his contentions.

(4) Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that it has specifically been mentioned that the petitioner had been committing heinous crime and was maintaining contacts with the anti-social elements, engaged in the illegal trade of narcotic drugs. He was indulging himself in criminal activities by exercising his official status. Learned State counsel also submits that it was not desirable to retain the petitioner in

---

[1] 1991(1) SCT 125
[2] 2005(11) SCC 525
[3] 2013(4) SCT 830
[4] 2013(2) SCT 133
[5] 2013(1) SCT 140
[6] 1996(1) SCT 821
[7] 2008(1) SCT 396
[8] 1996 (3) SCT 113
[9] 2011(1) SCT 41
[10] 2012 (4) SCT 543
[11] 1995(4) SCT 222
[12] 2014(1) SCT 561
[13] 2014(1) SCT 554
[14] 2012(4) SCT 323
[15] 2008(3) SCT 816
[16] 2012(3) SCT 648
[17] 2004(4) SCT 462

Police service by considering the public interest. The impugned order was passed by exercising powers conferred by Section 7 of the Police Act, 1861 read with Rule 16(1) of the Punjab Police Rules and Article 311 (2)(b) of the Constitution of India.

(5) Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

(6) The facts with regard to appointment of the petitioner on the post of Constable as well as his promotion as Head Constable and ASI are not disputed.

(7) Admittedly, the petitioner was dismissed from service vide order dated 23.05.2014 dispensing with the departmental inquiry under Article 311(2)(b) of the Constitution of India. Simply it has been mentioned that the petitioner is having links with known criminals and has been receiving illegal gratification for extending favour to the well known narcotic smugglers.

(8) The issue in the present petition is as to whether there were reasons for dispensing with the inquiry by attracting the provisions of Article 311 (2) (b) of the Constitution of India or not. It is not disputed that on the basis of recovery of contraband from the petitioner, FIR was registered against him. While dispensing with the inquiry, it has been mentioned that on earlier occassions also, the petitioner was found to be involved in many cases as serious allegations were levelled against him and punishments were also awarded to him. It is also an issue for consideration before this Court as to whether the previous incidents of misconduct is a ground for dispensing with the inquiry or not.

(9) Article 311 (2) (b) of the Constitution of India is relevant for resolving the controvery in hand and the same is reproduced as under:-

> "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 civl post under the Union or a State shall be dismissed or removed by an authority subordinate tot hat 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.:

(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 ins 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 the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]"

(10) In the present case, the provisions of Article 311 (2) (b) have been attracted only on the ground that the petitioner was having contacts with well known criminals and smugglers and was indulging in criminal activities by misusing his official status. It is also mentioned that the petitioner was involved in heinous crime under NDPS Act. Simply it has been mentioned that in the public interest, it is not desirable to retain the petitioner in service. The satisfaction has only been recorded by stating that it is not reasonably practicable to hold a regular departmental inquiry against the petitioner as the witnesses are not likely to depose against him due to fear.

(11) On perusal of service record, nothing has been found against him. Even earlier he was also granted promotions. Neither the names of the drug smugglers, with whom the petitioner was having

contacts, have been mentioned nor it has been mentioned as to how he was helping them. In case, anything was there against the petitioner, then why action was not taken against him. Merely on the basis of oral statement with regard to the involvement of the petitioner and without mentioning the reasons as to how it was not practicable to hold departmental inquiry, the impugned order has been passed. The report of SSP Tarn Taran was received on 23.05.2014 and the impugned order was passed on that very day i.e., 23.05.2014, which shows that the concerned authority has not applied its mind independently and the impugned order of dismissal has been passed in a mechanical manner by attracting the powers provided under Article 311(2)(b) of the Constitution of India. The satisfaction arrived at by the authority was not based on objective assessment.

(12) It has been held in various judgments of this Court as well as Hon'ble the Supreme Court that an inquiry under Article 311(2)(b) of the Constitution of India is a rule and dispensing with the inquiry is an exception. This power is not to be exercised arbitrarily and out of ulterior motive. The competent authority is bound to follow the principles of natural justice and the normal procedure cannot be dispensed with only on the pretext that it is not practicably possible to hold departmental inquiry. In the present case, nowhere it has come on record that even any attempt was made to hold regular departmental inquiry by the appointing inquiry officer or any witness was not in a position to depose against the petitioner. No cogent material has even been brought on record while passing the impugned order of dismissal as to how it was not possible to conduct the departmental inquiry and no reason whatsoever has been mentioned as to why the procedure for dispensing with the departmental inquiry has not been adopted. While passing the impugned order, the punishing authority has not even seen the service record of the petitioner and extreme penalty of dismissal has been imposed. Even it has not been considered as to whether the lesser penalty could have been awarded to the petitioner. The petitioner was having good service record for the last 25 years and no punishment was awarded to him. Not only the annual confidential reports are good but the petitioner has also been awarded 31 commendation certificates for his work, which are on record. The punishing authority cannot be oblivious of the good service record and also the fact that a single act will be a ground for imposing extreme penalty of dismissal. While awarding the extreme penalty of dismissal, the total length of service of more than 25 years has not been considered and the petitioner has been deprived of his right of

pension.

(13) As per Rule 16.2 of the Punjab Police Rules, 1934 (for short 'the Rules'), the past service record cannot be ignored and prior to passing of impugned order of dismissal, the competent authority was required to exercise his power provided under Rule 16.2 of the Rules as it is imperative for the authority to record a finding that the employee is guilty of the gravest act of misconduct or that he is guilty of continued misconduct, which proves its incorrigibility and complete unfitness for police service. No such finding has been recorded while passing the impugned order. Even there is no reference with regard to the service record of the petitioner in the impugned order to show that any other penalty had been imposed upon the petitioner. Even the appellate authority has also not taken into consideration the mandatory provisions of Rule 16.2 of the Rules while passing the impugned order.

(14) The scope of Article 311(2)(b) of the Constitution of India has been dealt with by Hon'ble the Apex Court in ***Jaswant Singh's*** *case (supra)* wherein it has been held as under: -

> "The decision to dispense with the departmental enquiry 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 whim and caprise of the concerned Officer."

(15) The scope of judicial scrutiny was also considered in ***Jaswant Singh's*** *case (supra)* wherein earlier judgment of the Constitution Bench in ***Union of India*** *versus* ***Tulsi Ram Patel***[18]**,** has been relied upon wherein it has been held as under: -

> "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 malafide or motivated by extraneous considerations or merely a ruse to dispense with enquiry."

(16) The Hon'ble Apex Court in case of ***Sudesh Kumar*** *versus*

[18] (1985) 3 SCC 398

***State of Haryana & others***[19] had held that an inquiry under Article 311 sub clause (2) of the Constitution of India is a rule and dispensing with the inquiry is an exception. It was also held that the authority dispensing with the inquiry under Article 311 sub clause (2) (b) of the Constitution of India must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. It is by now well settled in a catena of judgments that the subjective satisfaction of the competent authority for dispensing with a regular departmental inquiry must be based on cogent material and a regular inquiry cannot be dispensed with solely on the ipse dixit of the concerned authority. Subjective satisfaction for dispensing with the inquiry not supported by any material cannot be held to be justified. An order of dismissal, where the same is found based on material available before the punishing authority in the form of a preliminary inquiry, information etc. which could be made the basis for forming an opinion that it was reasonably impracticable to hold a regular departmental inquiry would certainly not call for any interference but in a situation where no such material was available as is the case in the present situation, the exercise of power under clause (b) of the second proviso to Article 311 sub clause (2) would have to be held to be arbitrary and illegal.

(17) On close reading of Article 311(2), it cannot be denied that a Government employee cannot be dismissed from service without holding an inquiry 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 inquiry. The order of dismissal or removal from service can be passed under any of the three clauses.

(18) There are two conditions precedent which must be satisfied before action under clause (b) of second proviso is taken against a government servant. These conditions are as under: -

> "(i) There must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases

[19] 2005 (11) SCC 525

would be: -

(a) Where a civil servant, through or together with his associates, terrorises, threatens or intimidates winesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time of attempt to hold the inquiry, is made.

(19) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an inquiry or because the department's case against the civil servant is weak and, therefore, is bound to fail. In the present case none of these contingencies exist.

(20) The other aspect of the matter is that in the impugned order it was held that it was not reasonably practicable to hold inquiry. The respondents should have justified their stand in arriving at the conclusion that it was not reasonably practicable to hold inquiry. Had any attempt to hold inquiry been made i.e., witnesses were called and they failed to appear, only in such eventuality it could be held that it was not reasonably practicable to hold inquiry. In this case, no inquiry was made and the petitioner was dismissed from service by invoking the provisions of Article 311(2) of the Constitution of India.

(21) There is no material on the record that witnesses could not come forward freely to depose against the petitioner in a regular departmental inquiry and the case of the petitioner is fully covered by ***Tulsi Ram Patel's*** *case (supra),* ***Jaswant Singh's*** *case (supra)* and ***Chief Security Officer*** *versus* ***Singasan Ravi Dey***[20]**.**

(22) It is also well settled that statutory powers conferred upon authorities have to be exercised by them and if in substance it is exercised by another, it will be a case of failure to exercise the said statutory powers resulting decision in such a case to be ultra vires and

[20] 1981(2) SLR 140

void. Admittedly, in the present case, the Senior Superintendent of Police, Shaheed Bhagar Singh Nagar has not applied his mind and virtually surrendered his powers only to the Senior Superintendent of Police, Tarn Taran and without having any material before him blindly dittoed the report of the Senior Superintendent of Police, Tarn Taran, which is not permissible under the law.

(23) In ***Union of India*** *versus* ***Subramanian***[21]**,** the action taken by the employer to dispense with the inquiry by declaring it to be reasonably impracticable to hold, was declared to be invalid. The Court held that the constitutional requirement of Article 311(2) cannot be converted into a dead letter for the simple reason that the employees have developed class or group feelings.

(24) In ***Arun Chaubey*** *versus* ***Union of India***[22], Hon'ble the Apex Court quashed the orders passed by the Deputy Chief Commercial Superintendent of the Northern Railways while exercising the powers under proviso (b) of Article 311 of the Constitution of India, on the ground that no material was available with the said authority for satisfying itself that it was not reasonably practicable to hold an inquiry.

(25) In view of the facts and circumstances as well as the law as discussed above, it has been established that the authority dispensing with the inquiry under Article 311(2)(b) has not recorded any satisfaction/reason to show as to why it was not reasonably practicable to hold an inquiry. Simply saying that it is not practicable to hold departmental inquiry, is not sufficient in such circumstances as there is no ground for dispensing with the inquiry. A reasonable opportunity of hearing as required under Article 311(2) of the Constitution of India was necessary to be given to the petitioner to defend himself and to establish his innocence by cross- examining the prosecution witnesses produced against him or by examining the defence witnesses in his favour, if any. This could have been done only if inquiry was conducted or the petitioner was informed of the charges levelled against him.

(26) In the present case, the mandate of Article 311(2) of the Constitution of India has been violated by depriving the reasonable opportunity of being heard to the petitioner.

---

[21] 1985(1) SLR 238
[22] 1985(1) SLR 238

(27) Hence, in this matter, I am of the view that the order of dismissal of service of the petitioner is not sustainable in law. Accordingly, it is, hereby, quashed and set-aside. However, the respondents are at liberty, if so advised, to hold an inquiry against the petitioner by affording him reasonable opportunity of hearing and thereafter, pass proper order as it may deem fit in accordance with law.

(28) The writ petition is, accordingly, allowed.

*Tejinderbir Singh*