



CWP No.8612 of 2021(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP No. 8612 of 2021(O&M)****Date of Decision:13.05.2024****Baljinder Singh****....Petitioner**

VS.

State of Punjab and others**....Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**Present: Mr. Anupam Bhardwaj, Advocate
for the petitioner

Mr. Pawan Kumar, DAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 06.10.2017 (Annexure P-5) whereby he was dismissed from service without holding inquiry as contemplated by Rule 16.24 of the Punjab Police Rules, 1934 (for short '1934 Rules') read with Article 311 (2) of the Constitution of India.

2. The petitioner joined Punjab Police as Probationer Sub-Inspector on 20.05.2014. Two FIRs bearing No.102 and 103 dated 30.09.2017, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were registered against Sukhdev Singh @ Deba and Pargat Singh @ Pagga, at Police Station Harike, District Taran Tarn. The respondent found that during the course of investigation of aforesaid FIRs,

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the petitioner has accepted illegal gratification from the accused of the aforesaid FIRs. An FIR No. 108 dated 20.10.2017, under Section 7/13(2) of the Prevention of Corruption Act, 1988 and Section 59 of the NDPS Act, 1985 came to be registered at Police Station Harike, District Tarn Taran against petitioner and HC Jatinder Singh. The petitioner came to be dismissed vide order dated 06.10.2017 of SSP, Tarn Taran, however, co-accused HC Jatinder Singh vide order dated 12.10.2017 was put under suspension. The petitioner preferred an appeal before appellate authority which was dismissed vide order dated 10.05.2019 passed by Inspector General of Police, Boarder Range, Amritsar. He further unsuccessfully preferred appeal/representation before Director General of Police.

3. Mr. Anupam Bhardwaj, Advocate submits that there was no occasion to dispense with mandatory inquiry contemplated by Article 311 of Constitution of India read with Rule 16.24 of the 1934 Rules. The respondents acting in a mechanical manner dispensed with inquiry and dismissed the petitioner from service. The co-accused was initially suspended and he has been re-instated.

4. Per contra, Mr. Pawan Kumar, DAG, Punjab submits that petitioner accepted illegal gratification from accused in aforementioned FIRs, thus, it was indispensable to dismiss him from service. It was not possible to conduct inquiry, thus, he was dismissed without conducting inquiry.

5. I have heard counsel for the parties and perused the paper book with their able assistance.



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6. From the perusal of record, it is evident beyond the pale of doubt that petitioner was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of Punjab Police Rules read with Article 311 of the Constitution of India. This is not first case where the jurisdictional SSP of State of Punjab has dispensed with inquiry as contemplated by 1934 Rules and Constitution of India. This Court has found that as soon as an FIR is registered against a police official, the jurisdictional SSP opts to dispense with the inquiry. He does not think it necessary to conduct inquiry which is mandatory. As per second proviso to Article 311 (2) of the Constitution of India, inquiry may be dispensed with (i) where 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 (ii) where the competent authority finds that it is not reasonably practicable to hold such inquiry or (iii) where President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. For the ready reference, Article 311(2) of the Constitution of India is reproduced hereinbelow:-

“311(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.”

7. A conspectus of aforesaid Article reveals that in case of conviction, inquiry may be dispensed with. Inquiry may also be dispensed with where it not reasonably practicable to hold such inquiry. In the case in hand, respondent has concluded that no witness on account of fear of petitioner would come forward, thus, it is not practicable to hold inquiry. The respondent has miserably failed to consider that foundation of dismissal of petitioner is registration of FIR for accepting illegal gratification. On account of said allegation, an FIR has been registered under Prevention of Corruption Act. Witnesses of criminal case were bound to be key witnesses of the departmental inquiry. If the respondent despite being jurisdictional SSP is unable to secure presence of witnesses and create free and fair atmosphere, it is highly unbelievable that those witnesses would depose before the trial court against the petitioner.

8. The reason advanced by SSP for dispensing with inquiry is not the actual reason because same reason has been advanced in every case



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where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold inquiry. Mere writing one line in the impugned order that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry. This course was adopted in the case of co-accused, thus, there was no reason to adopt different course in the case of petitioner. It is interesting to note that FIR was registered against the petitioner as well as HC Jatinder Singh and he has been re-instated before awaiting conclusion of criminal proceedings.

9. In the wake of above discussion and findings, this Court is of the considered opinion that respondents without any logical reason dispensed with mandatory inquiry. The impugned orders deserve to be set aside and accordingly set aside.

It is made clear that petitioner, as conceded, shall not be entitled to back wages. The respondent shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings.

10. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

13.05.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	