

CWP No.6052 of 2017(O&M)

-1-

2023:PHHC:157782

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Reserved on:	31.08.2023
Listed for re-hearing	18.10.2023
Re-heard on	20.10.2023
Pronounced on:	08.12.2023

1. CWP No. 6052 of 2017 (O&M)

Paramjit Singh Sandhu	VERSUSPetitioner
State of Punjab and others	Respondents

2. CWP No. 24151 of 2017(O&M)

Amrit Lal	VERSUSPetitioner
State of Punjab and others	 Respondents

3. CWP No. 24312 of 2017 (O&M)

Avtar Singh	VERSUSPetitioner
State of Punjab and others	Respondents

4. CWP No. 9385 of 2018 (O&M)

Satnam Singh	VERSUSPetitioner
State of Punjab and others	Respondents

5. CWP No. 10272 of 2018(O&M)

Jaswinder Singh	VERSUS	...Petitioner
State of Punjab and others	Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Dharam Vir Sharma, Senior Advocate, assisted by Mr. S.S.Rana, Mr. Arvind Kumar Sharma, Mr. Arshdeep and Ms. Sunder Kumari Advocates, for the petitioner in CWP-6052-2017.

Mr. A.K.Walia, Advocate, for the petitioners in remaining four writ petitions.

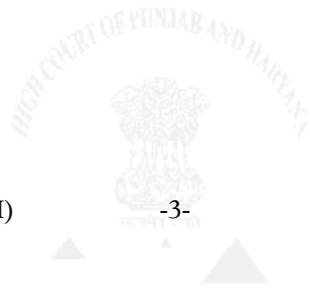
Mr. R.K.Kapoor, Additional Advocate General, Punjab.

SANJEEV PRAKASH SHARMA, J.

1. All these writ petitions have been heard together as all the writ petitioners, who are holding different posts in the Maximum Security Jail, Nabha, District Patiala, have been inflicted penalty of dismissal from service by invoking provisions of Article 311(2)(b) of the Constitution of India with regard to an incident of jail break which occurred on 27.11.2016 in the day time at around 09:00 am.

FACTS

2. Certain facts which are common to all need to be noticed and they are that the Director General of Police, Punjab submitted a report after preliminary enquiry relating to the jail break stating that on 27.11.2016 at around 09:00 am, an incident of jail break had taken place at Maximum Security Jail Nabha, District Patiala. Several armed assailants meticulously uniformed and carrying 4/5 weapons reached the jail in three white Fortuner, two Verna cars and one i20 car and at the outer gate they were stopped by two Punjab Ex-servicemen Corporation Guards (hereinafter referred to as PESCO guards) whom they informed that they had come to handover a detainee who was in handcuffs. The guards allowed the entry of the vehicle and the vehicles reached the main entrance of the Jail where the driver who was in uniform came out of the car and over powered the Santri and also disarmed him along with others and snatched his SLR. Another accomplice at the outer gate with the help of others who was waiting outside the perimeter wall over powered the two Punjab Ex-servicemen guards. They fired around 30 rounds. Six detainees of the jail were already waiting for them inside the porch

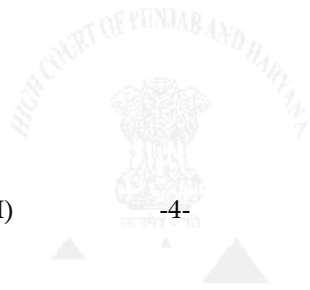


CWP No.6052 of 2017(O&M)

-3-

2023:PHHC:157782

between the two security gates where they had managed to reach by convincing the staff. They came in pairs from different Cells between 08:50 am and 09:00 am. They were allowed to go inside the computer room from where they had a clear view of the main gate and were waiting for their accomplices who came to free them and as soon as they saw that the Honda city car had reached the main gate, all of them overpowered both the warders (Darban and MHC) who was unarmed and attempted to snatch the keys of the main gate. In the meanwhile, one accomplice threw a pistol inside the gate from the lower end of the gate and one of the accused broke open the lock with the fire arm and they escaped taking away along with them two SLRs of the jail guards. Two of the detainees were hard core terrorists and were wanted in several terrorist related cases including 2008 attack on Sirsa Baba Gurmeet Ram Raheem Singh and of recovery of explosive at Halwara Air Force Station in 2010. As many as 10 FIRs relating to several serious heinous offences were registered against one Harminder Singh @ Mintu. Another terrorist Kashmir Singh son of Hari Singh was arrested for attack on Shiv Sena Punjab Secretary Harwinder Soni. As many as 5 FIRs were registered against him. Third detainee Harjinder Singh @ Vicky Goundar was a notorious gangster and a prime accused in the murder of one person and there were 9 FIRs registered against him. Gurpreet Singh Sekhon was notorious gangster involved in murder of Sukha Kahlwa and there were as many as 20 FIRs registered against him for heinous offences. Kulpreet Singh @ Neeta Deol who is a notorious gangster and six cases of heinous offences including murder, attempt to murder, abduction and robbery



CWP No.6052 of 2017(O&M)

-4-

2023:PHHC:157782

were registered against him. Amandeep Singh @ Aman Dhotia had 14 cases registered against him. All six managed to escape from the High Security Jail Prison.

3. The said report was based on the report of the Senior Superintendent of Police. An FIR was registered under Sections 307, 392, 223, 224, 120-B, 148, 149 IPC and 25 of Arms Act against the escaped detenus and some of the petitioners.

4. Petitioner-Paramjeet Singh Sandhu in CWP No.6052 of 2017 was holding the post of Superintendent Jail. He is stated to have left the station on 26.11.2016 to attend funeral of one of his close relatives at Ferozepur. On 27.11.2016 was Sunday. He was not required to visit jail on Sundays and holidays as per Chapter 6 of the Punjab Jail Manuals. He, therefore, has not taken leave but had informed his immediate subordinate the Deputy Jail Superintendent Bheem Singh to take charge as a matter of practice. As soon as he came to know about the incident, he immediately rushed to the jail premises and reported to the authorities.

5. The Director General of Police received a report in this regard from the Additional Director General of Police, who informed that the petitioner was absent from the duty and left the station without sanctioning of the leave. He was absent at the time when the incident took place and no prior information had been given by him to his superiors of having left the station nor he had handed over the charge of the jail to any other competent officer when he was not on duty. The petitioner had gone to attend the cremation of his relative without informing his seniors. On account of loose administration of petitioner-

Paramjeet Singh Sandhu, other officials had become completely lethargic and dangerous terrorist/gangster/hardcore criminals managed to reach *Deodhi*, who were in touch with outside persons and later on escaped. The Director General of Police having reached to the conclusion of the admitted facts of the petitioner having absent from duty without prior sanction and finding that conducting of regular departmental enquiry was wholly impracticable as it would not be easy to find witnesses who will depose with regard to the said escape reached to the conclusion to invoke power under Article 311(b)(2) of the Constitution of India and dismissed petitioner-Paramjeet Singh Sandhu from the post of Superintendent vide order dated 30.11.2016.

GROUND TAKEN BY PETITIONER PARAMJEET SINGH

6. Learned counsel for the petitioner has submitted that the power under Article 311(b)(2) of the Constitution of India could not have been invoked keeping in view the facts of the case as there was no occasion for not conducting a regular enquiry. More so the petitioner had 30 years of unblemished service record and he should have been given a chance to defend himself. The punishment of dismissal from service has been imposed by taking away his rights to livelihood without affording opportunity of hearing.

7. Learned counsel for the petitioner has further pleaded that the order has been passed in violation of Article 166 of the Constitution of India as order does not mention of the power being exercised in the name of the Governor.

8. Learned counsel for the petitioner has relied upon the law laid down in **Bachhittar Singh vs. State of Punjab and another**, AIR 1963 SC 395, **M/s. Bijoya Lakshmi Cotton Mills Ltd. vs. State of W.B. and others**, AIR 1967 SC 1145, **Kedar Nath Bahl vs. State of Punjab and others**, AIR 1979 SC 220, **L.G. Chaudhari vs. The Secretary L.S.G. Department, Govt. of Bihar and others**, AIR 1980 SC 383 and **Jaipur Development Authority and others vs. Vijay Kumar Data and another**, 2011 (5) RCR (Civil) 351. He has also relied upon **Sudesh Kumar vs. State of Haryana and others** 2005 (11) SCC 525. He has also relied upon Article 311(2)(b) of the Constitution of India.

9. *Per contra*, learned counsel for the State has submitted written submissions and has stated that practice and procedure being adopted by Jail Superintendent of leaving headquarter by informing the officiating Deputy Superintendent Jail is wholly misleading. Petitioner Paramjeet Singh could not have left the head quarter and the prison without information or without grant of station leave. In this regard, the Additional Director General of Police/ Prisons, Punjab, has issued instructions on 24.01.2012 to the following effect:-

“From

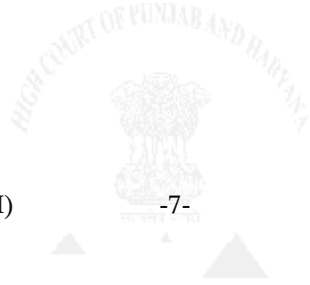
*Director General of Police, Prisons,
Punjab, Chandigarh.*

To

*All Superintendent Central/ District Jails,
Punjab,
No. G.I./C-1/ Establishment-1/1384-1402
Dated 24-01-2012.*

Sub :

*Recommending Superintendent Jails to grant
station leave on Saturdays/ Sundays and other
gazette holidays.*



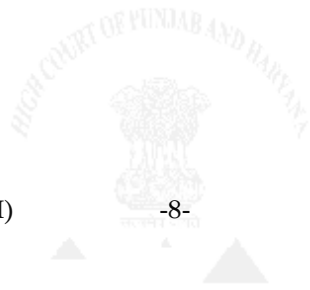
Please refer to the subject cited above.

2. *According to the Punjab Jail Manual, the duty of the Superintendent Jail is that of the Jail Administrator, while the Deputy Superintendent Jail is the Chief Executive Officer. The Superintendent Jail has to visit the Jail on every working day as per Jail Manual. Apart from this, one has to visit the jail even on Sundays or gazette holidays if there are any special arrangements. On holidays i.e. Saturdays, Sundays or gazette holidays, the Superintendent can take leave from the jail office i.e. can work only from the jail residence. If he has to go to work outside the jail on Saturday, Sunday, he can always take local leave from the competent authority.*

3. *In view of the above, Saturdays and Sundays and other gazette holidays of the Superintendent Jail shall not be counted as his extra leave but for this it is necessary that he leaves the Jail premises with the permission of the station competent authority.*

*For: Addl. Director General of Police/ Prisons,
Punjab, Chandigarh.”*

10. Thus, the petitioner could not have left the jail without taking station leave from the authority. It is further submitted that petitioner Paramjeet Singh Sandhu reported back on duty on 27.11.2016 at 12.10 P.M. The reason for absence has been shown to be the cremation of a very distant relative i.e. mother-in-law of the cousin of the writ petitioner and it cannot be called such an emergent situation where he would leave a Maximum Security Jail, Nabha, while holding the post of Superintendent. It appears that there is a deep routed conspiracy and pre-planning and the petitioner being Superintendent of Jail failed to trace out any information regarding this conspiracy and his absence from the jail on the day of incident further aggravates things benefiting the incident of jail break to become successful.



CWP No.6052 of 2017(O&M)

-8-

2023:PHHC:157782

11. Learned counsel for the respondents has also informed that the Deputy Superintendent of Jail was made one of the accused in the criminal case and ultimately he was found involved in the jail break and has been sentenced to 10 years rigorous imprisonment and fine. The other Head Warder Jagmeet Singh was also convicted and sentenced to 10 years rigorous imprisonment and fine. The order of dismissal was passed in the case of Assistant Superintendent Bheem Singh and Jagmeet Singh. They have not filed any writ petition. It is further submitted that the decision does not require to be interfered with as it was not possible to produce witnesses and conduct a regular departmental enquiry in terms of Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970.

12. Learned counsel for the State has submitted that the order has been passed as per Rules of Business of the Government of Punjab, 1992 which have been passed by the Governor invoking his powers under Article 166 (II) and (III) of the Constitution of India. It is stated that Rule 9(1) of the Rules of Business provides as under:-

“9. (1) Every order or instrument of the Government of the State of Punjab shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary or an Under Secretary or such other officer as may be specially empowered by the Governor in that behalf and the signature so made shall be deemed to be the proper authentication of such order or instrument.”

13. Thus, it is submitted that the order has been passed by a competent authority and does not suffer from lack of jurisdiction.

14. In CWP Nos. 24151, 24312 of 2017 and CWP Nos. 9385 and 10272 of 2018 similar arguments have been raised on behalf of the petitioners against whom order of dismissal has been passed.

15. There is slight change in the order in the cases of Amrit Lal petitioner in CWP No. 24151 of 2017 and Avtar Singh petitioner in CWP No. 24312 of 2017. The order has been passed exercising powers with reference to Clause (b) of proviso to Article 311 (b) of the Constitution of India. In the cases of Satnam Singh petitioner in CWP No. 9385 of 2018 and Jaswinder Singh petitioner in CWP No. 10272 of 2018, the order has been passed with reference to Clause (c) of proviso to Article 311 (2) of the Constitution of India. The order was passed on 9.12.2016 in the case of Amrit Lal, whereas in the cases of Avtar Singh, Satnam Singh and Jaswinder Singh, the orders were passed on 07.12.2016 by the Deputy Inspector General of Prisons, Ferozepur Circle-cum-Superintendent Headquarters Jail, Ferozepur. The Competent Authority and the Appointing Authority of Amrit Lal, who was the Head Warder and in the case of other three persons, who were holding the posts of Warder, the Superintendent Headquarters Jail is the Appointing Authority and the Appellate Authority is the Inspector General.

16. Learned counsel for the petitioners apart from adopting the submissions raised in the case of Paramjeet Singh Sandhu (supra), has submitted that there was no occasion for invoking clause (c) of Article 311 (2) of the Constitution of India as the action of the petitioners cannot be said to be of such nature where the interest of security of the State would be affected, if an enquiry is conducted regarding the allegations

and the same should not be dispensed with while passing order of punishment of dismissal.

17. Learned counsel for the State has submitted written submissions and submitted that with regard to Amrit Lal, who was holding the post of Head Warder on the pay scale of Assistant Superintendent Jail, was on duty as day duty officer between 08.00 a.m. and 11.00 a.m. He failed in his duty to supervise his subordinate staff in manning the gates, who let such hardened criminals to leave the barracks and reach the *Deodhi* without any permission. Because of his gross negligence and lack of supervision, serious breach of security has occurred, which also leads to a threat to the National security. One of the escaped prisoners was a hardcore terrorist against whom there were allegations of raising war against the Nation being alleged chief of Khalisthan Liberation Force. Several cases of terrorist activities and recovery of explosive were registered against him and against another terrorist Kashmir Singh, who had also managed to escape, there were several cases of attacking including attack on the Secretary of Shiv Sena Punjab. The other inmates, who were able to escape, were also notorious gangsters and prime accused in murder cases. The Disciplinary Authority in the case of petitioner Amrit Lal noticed as under:-

“Under normal circumstances, I would like to initiate departmental inquiry against Amrit Lal, Head Warder (On Pay Scale of Assistant Superintendent) taking disciplinary action against him but seeing the gravity of misconduct and circumstances, I am of considered view and satisfied with proper application of mind that it is no reasonably

practicable to hold departmental inquiry against Amrit Lal, Head Warder (On Pay Scale of Assistant Superintendent). In the abovesaid circumstances, nobody will come forward to depose against Amrit Lal, Head Warder (On Pay Scale of Assistant Superintendent) because there is always threat to life and liberty of the witnesses.

And whereas the competent authority is of the view that in the face of such grave culpable acts of omission and commission, there is no justification for the continuation in Service of Amrit Lal, Head Warder (On Pay Scale Assistant of Superintendent) Maximum Security Jail, Nabha as he has betrayed all the responsibility placed upon him by law and rules from the above facts that have transpired. The competent authority concludes that there has been misconduct of such magnitude by Sh. Amrit Lal, Head Warder (On Pay Scale of Assistant Superintendent) Maximum Security Jail, Nabha that the severest penalty permissible by law is called for”

18. Learned counsel for the State submits that there has been due application of mind before reaching to the conclusion to dispense with the enquiry.

19. In the case of Avtar Singh petitioner in CWP No. 24312 of 2017, it is submitted by learned counsel for the State in the written submissions that the Competent Authority before passing the order impugned has noted that petitioner Avtar Singh was holding the post of Warder and was posted as *Deodi Munshi* on 27.11.2016. He left his duty without permission and deputed one Satnam Singh as *Deodi Munshi* at his own level due to which six notorious criminals succeeded to enter the

Deodhi area and escaped. The Disciplinary Authority in the case of Avtar Singh took the following decision:-

“.. under normal circumstances, I would like to initiate departmental inquiry against Avtar Singh, Warder No. 2493 taking disciplinary action against him but seeing the gravity of misconduct and circumstances, I am of considered view and satisfied with proper application of mind that it is not reasonably practicable to hold departmental inquiry against Avtar Singh, Warder No. 2493. In the abovesaid circumstances, nobody will come forward to depose against Avtar Singh, Warder No. 2493 because there is always threat to life and liberty of the witnesses.

And whereas the competent authority is of the view that in the face of such grave culpable acts of omission and commission, there is no justification for the continuation in service of Sh. Avtar Singh, Warder No. 2493, Maximum Jail, Nabha, as he has betrayed all the responsibility placed upon him by law and rules from the above facts that have transpired. The competent authority concludes that there has been misconduct of such magnitude by Sh. Avtar Singh, Warder No. 2493 Maximum Security Jail Nabha that the severest penalty permissible by law is called for.”

20. It is further submitted that as per Rule 272(1) of the Jail Manual for Superintendents and Management of Prisons in the Punjab, 1996, no warder shall, while on duty, at any time, under any circumstances, on any pretext, leave his post or absent himself from duty until relieved in due course and relieved from duty. Thus, it is submitted that the order of punishment has been passed with due application of mind.

21. In the case of Jaswinder Singh petitioner in CWP No. 10272 of 2018, the Competent and Appointing Authority noted as under:-

“Under normal circumstances, I would like to initiate departmental inquiry against Jaswinder Singh, Warder No. 126 taking disciplinary action against him but seeing the gravity of misconduct and circumstances, I am of considered view and satisfied with proper application of mind that in the interest of the security of State, it is not expedient to hold such an inquiry against Jaswinder Sing, Warder No. 126. In the aforesaid circumstances, nobody will come forward to depose against Jaswinder Singh, Warder No. 126 because there is always threat to life and liberty of the witnesses.

And whereas the competent authority is of the view that in the face of such grave culpable acts of omission and commission, there is no justification for the continuation in service of Sh. Jaswinder Singh, Warder No. 126, Maximum Security Jail, Nabha as he has betrayed all the responsibility placed upon him by law and rules from the above facts that have transpired. The competent authority concludes that there has been misconduct of such magnitude by Sh. Jaswinder Singh, Warder No. 126, Maximum Security Jail Nabha that the severest penalty permissible by law is called for.

I, Surinder Singh, IPS, Deputy Inspector General of Prisons, Ferozepur Circle-Cum-Superintendent, Head Quarter Jail Ferozepur, being the competent authority under Rule No. 15(1) read with annexure B of the Punjab Jails Department State Service (Class III) Executive Rules 1963 to dismiss him hereby resort to the provisions of Article 311 (2) (c) of the Constitution of India and dismiss Jaswinder Singh, Warder No. 126 from service with immediate effect.”

22. It is also stated that a FIR was registered against petitioner Jaswinder Singh, however, he was not convicted for lack of evidence, although he was fully involved in the escape of convicts. It is stated that under the threat to life and liberty, no witness could come forward to depose and it was reasonably not practicable to hold such inquiry.

23. Learned counsel for the respondents further submits that the powers under clause (c) of proviso to Article 311 (2) of the Constitution

of India have been mentioned. It is apparent that the ingredients of clause (b) of proviso to Article 311 (2) were also satisfied while passing the order. It is submitted that dispensing of inquiry in three circumstances can be (i) where the delinquent has been convicted on criminal charge; (ii) where it is not reasonably practicable to hold an inquiry and (iii) where in the interest of the security of the State it is not possible. While the first circumstance was not present and the other two circumstances were sufficient for invoking the powers and dispensing with the regular departmental inquiry. It is also submitted that even if it is assumed that a wrong proviso has been applied and the order should have been passed under Article 311 (2)(b), the same would not warrant interference as mere mentioning of wrong provision of law does not invalidate the order. Learned counsel for the respondents has relied upon AIR 1985 Supreme Court 470 State of Karnataka vs Muniyalla. It is, thus, submitted that the order should be read to have been passed under clause (b) as well as clause (c) of proviso appended to Article 311 (2).

24. With reference to petitioner Satnam Singh, it has been submitted by learned counsel for the State that the competent authority has examined the allegations against him and has reached to the following conclusion:-

“Under normal circumstances, I would like to initiate departmental inquiry against Satnam Singh, Warder No. 1058 taking disciplinary action against him but seeing the gravity of misconduct and circumstances, I am of considered view and satisfied with proper application of mind that in the interest of the security of State, it is not expedient to hold such an inquiry against Satnam Singh, Warder No. 1058. In the aforesaid circumstances, nobody will come forward to



CWP No.6052 of 2017(O&M)

-15-

2023:PHHC:157782

depose against Satnam Singh, Warder No. 1058 because there is always threat to life and liberty of the witnesses.

And whereas the competent authority is of the view that in the face of such grave culpable acts of omission and commission, there is no justification for the continuation in service of Satnam Singh, Warder No. 1058, Maximum Security Jail, Nabha as he has betrayed all the responsibility placed upon him by law and rules from the above facts that have transpired. The competent authority concludes that there has been misconduct of such magnitude by Sh. Satnam Singh, Warder No. 1058, Maximum Security Jail Nabha that the severest penalty permissible by law is called for.

I, Surinder Singh, IPS, Deputy Inspector General of Prisons, Ferozepur Circle-Cum-Superintendent, Head Quarter Jail Ferozepur, being the competent authority under Rule No. 15(1) read with annexure B of the Punjab Jails Department State Service (Class III) Executive Rules 1963 to dismiss him hereby resort to the provisions of Article 311 (2) (c) of the Constitution of India and dismiss Satnam Singh, Warder No. 1058 from service with immediate effect.”

25. It is also stated that petitioner Satnam Singh was also named in the FIR but was not convicted. The arguments as submitted for petitioner Jaswinder Singh (supra) have been repeated in the written submissions by the learned Additional Advocate General in relation to this petitioner too.

26. I have considered the submissions. The following points deserve to be examined:-

- i) Competence of the authority passing the order;
- ii) Validity of exercising powers under proviso to Article 311 (2) (b) and (c) of the Constitution of India; and
- iii) Gravity of punishment awarded.

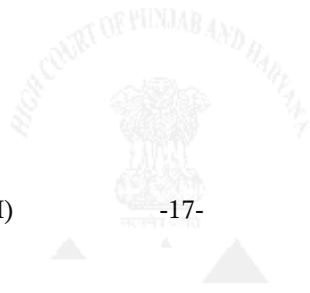
27. On the question of competence of the authority passing the order, it would be apposite to quote the finding in Bachhittar Singh's case

(supra), where the Supreme Court had the occasion to examine Article 166 with reference to powers exercised by the Revenue Minister and where the said decision of the Revenue Minister would prevail over the decision of the Secretary. The order passed by the Secretary was, however, not interfered with. The Apex Court in Bachhittar Singh's case (supra) considered the aspect in para 6, which reads as under:-

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.”

28. The aforesaid provisions under Article 166 have to be seen with reference to the Rules of Business as framed by the Government of Punjab on 25.11.1992 which have been assented by the Governor of Punjab and the said Rules, therefore, have been framed under the exercise of powers conferred under Clause (2) and (3) of Article 166 of the Constitution of India. Article 166 of the Constitution of India reads as under:-

“166. Conduct of business of the Government of a State.



(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order on instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor;

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.”

29. Thus, Rule 9 (1) of the Rules of Business empowers the officer, who is the Appointing Authority, to act on behalf of the Governor and signatures so made shall be deemed to be of proper authentication of such order or instrument.

30. In so far as submission raised by learned counsel for the petitioners that the order to be expressed in the name of the Governor is concerned, as pointed out here-in-above, once the Governor has empowered under the Rules of Business, the concerned official to pass orders on his behalf, presumption shall be drawn that an order is duly signed by a competent person in terms of Rules of Business, would be an order passed under Article 166 of the Constitution of India on behalf of

the Governor. In Departmental proceedings, the competent authority is the State Government and its power is exercised by the particular officer. The punishment order passed is also subject to filing of a review which is to be decided by the Governor. In these circumstances, therefore, the submission of learned counsel for the petitioners fails.

31. The submission of the learned counsel for the petitioners that the order should have been passed by the Governor is therefore, wholly misconceived and the same is rejected. The provisions of Article 166(2) of the Constitution would also have an application in the facts of the present case where the authority has been exercised under the Rules of business on behalf of the Government.

32. In view of above, the orders passed by the Appointing Authority dismissing the petitioners from service does not warrant any interference and the submissions raised by learned counsel for the petitioners are, therefore, rejected.

33. The second submission of the petitioner is with regard to dispensing with the regular inquiry. Rule 13(2) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 and also Article 311(2)(b) of the Constitution of India, read 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 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 reduced in rank except after an inquiry in which he has been informed of 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 evidence adduced during such inquiry and it shall not be necessary to give such a 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.”*

Rule 13(2) of Rules 1970.

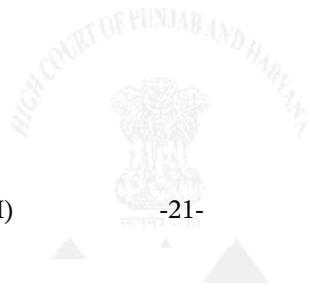
“13. Special procedure in certain cases -
Notwithstanding anything contained in Rule 8,9,10,11 and 12-

- (i) where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonable practicable to hold an inquiry in the manner provided in these rules; or*
- (iii) where the Governor is satisfied that in the interest of the security of the Sate, it is not expedient to hold any inquiry in the manner provided in these rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit:*

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.”

Thus, Rule 13(2) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 incorporates the provisions of Article 311(2)(b) of the Constitution of India.

34. The Supreme Court in various cases has examined provisions of Article 311 (2)(b) of the Constitution of India. In **Sudesh Kumar vs. State of Haryana and others** (2005) 11 SCC 525, the



CWP No.6052 of 2017(O&M)

-21-

2023:PHHC:157782

Supreme Court again found that though no reasons had been assigned as to why it was not reasonably practicable to hold an enquiry and the reasons given that the complainant who is the foreign national is likely to leave the country was not held to be a sufficient ground to dispense with the enquiry.

35. In **Ramesh Chand versus State of Punjab and others 2013 (4) SCT 830**, this Court reached to the conclusion that there was no material placed or disclosed before the Court which would show that an opinion was formed that it was not reasonably practicable to hold departmental enquiry and, therefore, the order was quashed.

36. In CWP No. 26911 of 2013- **Manjit Singh vs The State of Punjab and others**, decided on 12.12.2014 and **Daljit Singh vs State of Punjab and another 2015 (3) SCT 144**, this Court has also set aside the orders where the respondents invoked the powers under the proviso to Article 311 (2)(b) of the Constitution of India and dispensed with the enquiry.

37. This Court is of the firm view that as and when there is any allegation against an individual he has a right to defend. Principle of natural justice demand that he should be given an opportunity of hearing before passing of an order. The said principles of natural justice has been incorporated firmly in the Rules relating to conduct of departmental enquiry for imposing any of the major penalties as provided under the Rules. However, there may be circumstances where the allegations on the face of it are apparently so proved that no further enquiry relating to the

facts needs to be conducted. Such enquiry which is merely an eye wash can be dispensed with.

38. The relevant recitals where the Constitution Bench in Union of India vs Tulsiram Patel 1985 (3) SCC 398, observed and laid down the aforesaid position of law as under:-

“130. xxx In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. A 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 inquiry or because the Department's case against the government servant is weak and must fail.”

131. to 132. xxx xxx

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

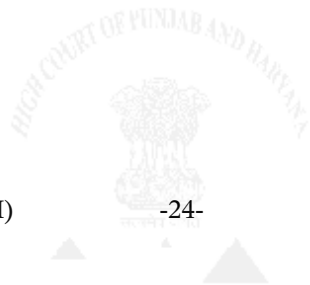
134. xxx ... Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. to 137 xxx xxx

138. xxx In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

139. and 140. xxx xxx

141. xxx ... It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to



commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces.”

38. In **Roop Singh Negi vs Punjab National Bank and others** 2009 (2) Supreme Court Cases 570, the Supreme Court was examining the manner in which the departmental proceedings should be conducted and it was held that documentary and ocular evidence have to be proved by examining witnesses but where the disciplinary authority has noticed that there is no possible witnesses to prove the allegations as the concerned inmates had already escaped and the other persons who were involved in the incident were facing criminal case against them, reaching to the conclusion that departmental enquiry is impracticable cannot be said to be a decision taken without application of mind.

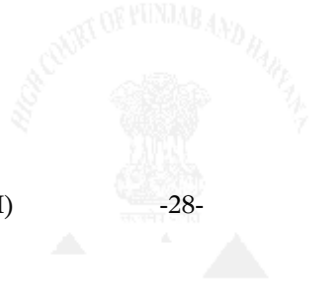
39. In case of **Union of India and others vs E. G. Nambudiri** 1991 (3) SCC 38, the Supreme Court has noticed that the order passed by the authority may not disclose the mind of the authority but reasons must be recorded in the file while drawing an adverse ACR. Paras 8 to 10 of the aforesaid judgment are extracted below:-

“8. *The question is whether principles of natural justice require an administrative authority to record reasons. Generally principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See : Regina v. Gaming Board for Great Britain v. Benaim and Khaida, (1990)2 QB 417 at 431. Though the principles of natural justice do not require reasons for decision, in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is, therefore, desirable that reasons should be stated.*

9. *There are however, many areas of administrative activity where no reasons are recorded or*

communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the Government servant. In the instant case adverse remarks as contained in item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity" is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are not commendatory in nature. As regards the remarks at Serial No. 6, they are self-explanatory, which show that in spite of oral and written warnings the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as contained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detail judgment or order giving details of the warnings or the material on which he formed opinion.

10. *There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the Comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order*



cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action.”

40. Similar view was taken in the cases of **State of Rajasthan vs. Sriram Verma 1996 (6) SCC 493**, wherein it was held that DPC needs not assign reasons for superseding a person. The respondents have placed in their written submissions the reasons which have been recorded by the competent authority while taking the decision to dispense with the enquiry. While examining the cases relating to departmental action, this Court will not substitute its own reasoning to that of the reasoning arrived at by the competent authority as this Court is not sitting in appeal.

41. Keeping in view the aforesaid principles, this Court finds that the respondents have taken a decision after due application of mind and the requirement of reaching to such conclusion cannot be said to be unjustified or arbitrary in nature. In view thereof, decision taken to dispense with the enquiry and passing punishment order cannot be said to be illegal or unjustified.

42. Learned counsel for the petitioners have also argued relating to the gravity of punishment awarded to the petitioners. However, this Court finds that in a recent judgment **Union of India vs Subrata Nath 2023 (1) SLJ 97**, it has been held that the High Court cannot direct reconsidering of any punishment already imposed by the disciplinary

CWP No.6052 of 2017(O&M)

-29-

2023:PHHC:157782

authority where there is *prima facie* guilt of great delinquency on the part of the delinquent and has held as under:-

“28. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappraise the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority.”

43. In view of the aforesaid findings, the order of dismissal from service passed by the respondents does not warrant any interference.

44. All the writ petitions are dismissed.

45. All pending applications are also dismissed.

45. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

08.12.2023
Mamta/vs

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No