

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

Claim Petition No. 02/2008

Raghubir Singh S/o Sri Jagroop Singh R/o Village-Mundia Rashulpur, P.O.
Mewla Kalan, P.S. Tanda, District Rampur (U.P.).

.....Petitioner

Versus.

1. State of Uttarakhand through Secretary, Ministry of Home, Govt. of Uttarakhand, Dehradun.
2. The Addl. Director General of Police (Admin.), Headquarter, Uttarakhand Police, Dehradun.
3. The Inspector General of Police, P.A.C. Uttarakhand, Dehradun.
4. The Commandant, 46th Battalion, P.A.C. Task Force, Rudrapur, Udham Singh Nagar, Uttarakhand.

.....Respondents.

Present: Sri M.C.Pant, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiya, Ld. P.O.
for the Respondent.

JUDGMENT

DATED: JUNE 04, 2013.

Justice J.C.S. Rawat, (Oral)

1. Present claim petition has been filed for seeking following relief:-
“In view of the facts mentioned in Para 4 above, of the petition prays for the following relief:
 - i. To issue a order or direction to set aside the impugned order dated 24.10.2005, appellate order dated 28.02.2007 and revisional order dated 25.08.2007 as contained to Annexure Nos. P-1, P-2 and P-3 and their effect and operation also.
 - ii. Issue a order or direction directing the respondents to treat the petitioner in service and to allow him all consequential benefits

including arrears or salary, promotion and other benefits, had it been the impugned order were never in existence.

- iii. To issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.
 - iv. Award cost of the petition in favour of the petitioner.”
2. The petitioner is an employee in the State P.A.C. Force as Constable. He remained absent from 27.12.2004 to 20.01.2005 and a preliminary enquiry was conducted by the authorities and after receiving the preliminary enquiry report, a regular departmental enquiry was conducted against the petitioner. The enquiry officer submitted his report holding the petitioner guilty of unauthorized absence from service and the departmental authority dismissed the petitioner from service vide order dated 24.10.2005. The petitioner preferred an appeal and revision before the competent authorities, which were also dismissed by the respective authorities. Feeling aggrieved by the said orders, present claim petition has been preferred.
 3. We have heard Learned counsel for the parties and perused the record.
 4. Ld. counsel Sri M.C. Pant, appearing on behalf of petitioner submitted that at the relevant time, when the petitioner is said to be absent from duties from 46th Battalion, P.A.C., he had been ill and he was admitted in the hospital at Kashipur while his movement as Constable was made from Rudrapur to Badrinath for security duty. He informed telephonically to Joshimath about his illness and he also sent his younger brother on 05.08.2005 with an application for the grant of sick leave. The wife and parents of the petitioner were also ill during this period. After the recovery from ailment of his wife, he joined service at the Headquarter. Ld. counsel for the petitioner further pointed out that the absence was not willful and it was due to the reasons as stated above. It is further contended by the Ld. counsel for the petitioner that the respondents have considered the past record of the petitioner while awarding the punishment without including the same in the charge sheet. He further contended that the petitioner has not been given fair opportunity to be heard at different stages.
 5. Ld. P.O. Sri Umesh Dhaundiya, appearing on behalf of State refuting the contention of the petitioner contended that the punishment order as

well as the appellate order and the revisional order contain the full details of the facts elaborated therein. He further contended that all the authorities have considered and appreciated all the facts placed before them by the petitioner. Ld. P.O. has also contended that the record of the past conduct was also placed before the punishing authority at the time of awarding the punishment, hence he considered the same record of the petitioner while awarding the punishment; respondents have given full opportunity at every stage to the petitioner to defend his case, but his defence was not found satisfactory, hence the same was rejected.

6. After due consideration of the submissions made by Ld. counsel for the parties and perusal of the record, the first question arose before us, as to whether the departmental authority should have considered the past conduct of the petitioner while awarding the punishment without indicating in the charge sheet or show cause notice. The same question arose before the Hon'ble Apex Court and the controversy has been settled down by the Hon'ble Apex Court in Mohd. Yunus Khan Vs. State of U.P. & others 2010(7) 970 which is as under:-

33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the post conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & others Vs. Bishamber Das Dogra,²⁶ (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam Vs. Bimal Kumar Pandit,²⁷ AIR 1963 SC 1612; India Marine Service (P) Ltd. Vs. Their Workmen,²⁸ AIR 1963 SC 528; State of Mysore Vs. K Manche Gowda,²⁹ AIR 1964 SC 506; Colour-Chem Ltd. Vs. A.L. Alaspurkar & others,³⁰ AIR 1998 SC 948; Director General, RPF Vs. Ch. Sai Babu,³¹ (2003) 4 SCC 331, Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate,³² (2005) 2 SCC 489; and Govt. of A.P. & others Vs. Mohd Taher Ali,³³ (2007) 8 SCC 656 and

came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/ service record of the delinquent for “adding the weight to the decision of imposing the punishment if the fact of the case so require.”

In view of the above, it is clear that if the disciplinary authority wanted to consider the past conduct of the petitioner in imposing the punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed about the same before imposing the punishment. In the instant case the charge sheet does not contain any such charge against the petitioner which has been considered at the time of punishment. The show cause notice also does not contain the same fact. Thus, the punishment order is liable to be set aside.

7. The next question which has come for consideration before us is that the respondents while awarding the punishment or while holding the petitioner guilty of the absence, it must be held that the absence was willful. In the instant case the enquiry officer on the appreciation of the facts has held that the petitioner is guilty of unauthorized absence from duties but has failed to hold that his absence was willful. The punishing authority as well as the appellate and revisional authorities have failed to consider this aspect. Hon’ble Apex Court in Sri Krushnakant B. Parmar Vs. Union of India 2012 (3) SCC 178 in Paragraph Nos. 19, 20, 21 & 22 has held as under:-

“19. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.

20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorizedly absent from duty but failed to hold the absence is

willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in M.B. Bijlani Vs. Union of India and others reported in (2006) 5 SCC 88 wherein this Court held:

“It is true that the jurisdiction of the Court in judicial review is limited, Disciplinary proceedings however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot taken into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

22. In the present case, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Sri P.Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressd to Sri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence

and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.”

8. Taking into consideration the fact that the enquiry was held in absentia after due communication of the charge sheet and the evidence was recorded, but the enquiry officer has not given a finding that the absence was willful, likewise the departmental authority gave a show cause notice to the petitioner and petitioner has also submitted his case that he was ill and submitted all the medical certificates, but after considering all the material he has held that the absence of the petitioner from duty was unauthorized, he has not given finding that the absence was willful, we are of the view that the impugned order as well the enquiry report and proceedings are liable to be quashed.
9. In view of the above facts, we quash the impugned order as well the enquiry report and proceedings. We direct the Respondent No.4 to start the fresh enquiry after the stage of the charge sheet and pass necessary orders in accordance with law against the petitioner.

ORDER

The petition is allowed. The impugned punishment order dated 24.10.2005, appellate order dated 28.2.2007 and revisional order dated 25.8.2007 are set aside. The payment of salary and all the benefits will be subject to the enquiry and rules. The Respondent No. 4 may proceed against the petitioner at his discretion in the departmental enquiry as stated above. If said departmental enquiry is started against the petitioner, the same will be disposed of expeditiously, preferably within a period of six months, from the date copy of this order is presented before Respondent No.4. No order as to costs.

Sd/-

(D.K.KOTIA)
VICE CHAIRMAN (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: JUNE 04 , 2013
DEHRADUN