

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRA DUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.Kotia

----- Vice Chairman (A)

CLAIM PETITION NO 67/2012

Virendra Lal (Armed Police Constable), S/o Late Sri Bansi Lal, posted
at Reserve Police Line Ratura, District Rudraparyag.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home
Department, Govt. of Uttarakhand, Dehradun,
2. Superintendent of Police(City) Hardwar,
3. Senior Superintendent of Police, Hardwar,
4. Director General of Police, Uttarakhand, Police Headquarters,
Subhash Road, Dehradun.

.....Respondents

Present: Sri Jugal Tiwari, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: JULY 24, 2014

DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)

1. The petitioner has challenged the censure entry recorded in
his character roll on 06.07.2010 by the Superintendent of

Police (City), Hardwar for the year 2010. The petitioner has further challenged an order dated 22.09.010 passed by Senior Superintendent of Police, Hardwar whereby the salary for the period w.e.f. 27.08.2014 to 08.03.2009 has not been paid to the petitioner.

2. The relevant facts for the disposal of this petition are that the petitioner is a Constable in the Police Department and in the month of May, 2004 was posted at Police Station Manglore, District Hardwar. On the ground of misbehaviour with Head Mohirrir, Ompal Singh on 06.05.2004, and another incident of indiscipline, the petitioner was placed under suspension and departmental proceedings were initiated and ultimately, the petitioner was found guilty and was dismissed from service. The order of dismissal was challenged before this Tribunal, which was quashed by this Tribunal vide its judgment dated 20.02.2009 passed in claim petition no. 30/2006, Virendra Lal vs. State of Uttaranchal & others. Consequently, the petitioner was reinstated in service but the Senior Superintendent of Police had decided to initiate fresh departmental proceedings on the ground of misbehavior with the Ompal Singh Head Mohirrir, therefore, a show cause notice (Annexure A-05) was issued against the petitioner proposing as to why a censure entry be not recorded in the Character Roll of the petitioner. The petitioner had submitted his reply (Annexure A-6). After considering the reply of the petitioner, the impugned order (Annexure A-1) was passed against the petitioner wherein the censure remark was recorded which is under challenge in this claim petition.

3. By way of a separate order, it was also decided that the petitioner is not entitled for salary for the period of dismissal i.e. w.e.f. 27.04.2004 to 08.03.2009 (Copy Annexure A-2). The petitioner had challenged this order also. The impugned order of awarding the censure entry was challenged in the departmental appeal, which was also dismissed vide order dated 05.06.2012 (Annexure A-3). Hence this petition.
4. The petition has been opposed on behalf of the respondents and it has been stated in the written statement that in compliance of the order passed by this Tribunal, the petitioner was reinstated in service. As the liberty was given to the respondents for initiating fresh departmental proceedings, the competent authority had decided to initiate fresh departmental action and after giving a show cause notice and after having considered the reply of the petitioner, the impugned order of censure remark was passed wherein there is no illegality.
5. It has further been stated that the order dated 22.09.2010 by which it was decided for not making payment of salary for the period of dismissal which is logical and legal. The petitioner has not challenged this order before the departmental authorities. Therefore, the petition is devoid of merit and thus is liable to be dismissed.
6. A rejoinder affidavit has also been filed reiterating the facts already stated in the main petition and no new facts have been alleged.
7. We have gone through the material available on record carefully and also heard learned counsel for the parties at length.

8. First of all, it has been contended on behalf of the petitioner that the order of awarding censure remark cannot be sustained as the reply has not been considered in the true perspective. The above contention has been refuted on behalf of the respondents. After hearing both the parties and perusal of record, it reveals that a show cause notice was given to the petitioner and the petitioner has submitted reply to the show cause notice. The impugned order of censure remark was passed after considering the reply of the petitioner. We do not find any illegality or irregularity in the impugned order of censure remark. Learned counsel for the petitioner has also tried to challenge the order on factual aspects such as that the petitioner did not misbehave with the head constable, Ompal Singh, It was Ompal Singh himself who had misbehaved with petitioner at a restaurant where the petitioner was taking his dinner and also hit the petitioner with the key of the bike in which the petitioner got injury in his eye, the bike was taken on the instance of Ompal Singh. We are not inclined to enter into the factual aspect of the matter as it is for the disciplinary authority to consider the factual aspects and generally the Tribunal does not enter into the factual aspect unless there is miscarriage of justice which does not appear in the present matter. Therefore, we do not find any justified ground for entering into the factual aspects of the matter. Consequently, the contention of the petitioner regarding the factual aspect does not help the petitioner and we reach to the conclusion that the competent authority has considered the reply of the petitioner in appropriate manner and there is no ground for interfering in the decision of the competent authority.

9. It has also been submitted on behalf of the petitioner that petitioner was not examined by any medical authority so, it was not justified for the disciplinary to infer that the petitioner was under the influence of liquor. In support of this contention, our attention has been drawn on the judgment by Hon'ble Supreme Court in Munna Lal vs Union of India & others, (2010(15) SCC, 399) wherein the incomplete medical report was not treated proper for taking into consideration, but this is not the case in the present matter, so the petitioner is not entitled for any benefit on the ground of the principle laid down by the Hon'ble Supreme Court. Merely because it has been observed by the disciplinary authority that the petitioner was intoxicated, it cannot be said that the disciplinary authority had acted without any basis. In every case, it is not necessary that the concerned person should be medically examined from drawing any inference of he is being under the state of intoxication. It can be judged on the basis of other evidence also, such as ocular evidence as has been done in the present case by the disciplinary authority. Therefore, the contention raised on behalf of the petitioner carries no weight. Our attention has also been drawn towards the judgment passed by the Single Bench of this Tribunal in Rajendra Shah vs. State of Uttarakhand passed in claim petition no. 66 of 2009 on 07.04.2010, wherein it was observed as follows.

“It has already been observed in the foregoing paras that impugned orders were passed without considering the reply of the petitioner, without verifying the facts of land dispute and even

without examining the complainant and other relevant parties, the punishment was awarded only on the basis of assumption as indicated by the enquiry officer. Thus the impugned orders were found to be passed without adhering to the procedure laid down in the rules and law.”

We have already said that the competent authority has considered the reply of the petitioner in justified manner so we are not inclined to extend any benefit to the petitioner on this ground. Thus, keeping in view the above facts we do not find any irregularity in the enquiry.

10. The order regarding the non-payment salary for the period of dismissal has also been challenged on behalf of the petitioner. In this context, a preliminary objection has been raised on behalf of the respondents that the petitioner has not availed all the departmental remedies, so the petition cannot be entertained in regard to the order in question. But we do not find any force in this contention. In this regard, Section 4(4) and 4(5) of Uttarakhand Public Services (Tribunal) Act, 1976 is relevant, which reproduced below:

“4(4) Where a reference has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules or regulation or any contract as to redressal of grievances in relation to the subject-matter of such reference pending immediately before such admission shall abate, and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall

thereafter be entertained under such rules, regulations or contract.

(4)(5) "The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances."

The above provisions make it abundantly clear that once any petition is admitted by the Tribunal, all the proceedings pending before any authority regarding the same cause of action shall stand abated. Moreover, once the petition is admitted, the question of availing departmental remedies cannot be raised at subsequent stage. In the case in hand, the petition has already been admitted; therefore, the question regarding the availing of remedies cannot be raised at this stage. Apart from the above provisions, the Hon'ble High Court in *Jai Prakash Rana Vs. State of Uttarakhand & others* (W.P. no. (SB) 116 of 2010) has held on 28.06.2010 as follows:

"We have given our thoughtful consideration to the rival contentions advanced by the learned counsel for the parties. We are satisfied, that the proceedings before the Public Services Tribunal can be initiated, even in a situation when an employee has not availed of any of the remedies. The tenor of Section 4, however, is to the effect that the particular employee must first avail of the alternative remedies available to him before approaching the Tribunal. Despite thereof, Sub-Section (6) of Section 4 of the U.P. Public Services

(Tribunal) Act, 1976 has to be given meaning and effect. Sub-Section 6 expressly envisages that an employee desirous of approaching the Public Services Tribunal, who has availed of the appellate remedy, and the Appellate Authority has passed an order disposing of the appeal preferred by him will be deemed to have “...availed of all the remedies available to him...” If Sub Section(6) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 has to be given effect to, there is no other alternative, but to conclude that an employee, who has availed of the appellate remedy and has obtained an order thereon, will be deemed to have exhausted all the alternative remedies available to him under the existing service rules.”

11. Keeping in view ,the above observation of the Hon’ble High Court and the provisions contained in the Uttarakhand Public Services(Tribunal) Act,1976 mentioned above, we are of the opinion that petition cannot be rejected merely on the ground of non-exhaustion of departmental remedies.
12. It is further contended on behalf of the petitioner that the order for non-payment of salary is bad in the eye of law. The petitioner cannot be penalized by not making payment on the ground of ‘no work no pay’. The petitioner was ready to work and it is the action of the respondents that the petitioner was not permitted to work. It is not justified to punish the petitioner for the action of the respondents. We have given considerable thought to the contention raised on behalf of the petitioner, but we do not find ourselves in agreement with learned counsel. The fact is that petitioner had not worked during the period of dismissal. The

departmental action was taken against the petitioner on the basis of serious allegations. Therefore, it cannot be said that the respondents were at fault. The respondents had considered the question of payment of salary for the period of dismissal, but it was not found proper. A separate order has been passed and we do not find any reason or ground to interfere in the decision of the disciplinary authority. So this order also needs no interference.

13. Therefore, the petition is devoid of merit and is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JULY 24, 2014

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