

**BEFORE 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. 50/11

Pawan Kumar Son of Shri Prem Singh R/o Village Fakredi Post Bhalsawag,
District- Haridwar.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary Home, Govt. of Uttarakhand,
Secretariat, Subhash Road, Dehradun,
2. Additional Director General of Police (Admin.) Uttarakhand Police
Headquarters, Dehradun,
3. Inspector General of Police, Garhwal Region, Camp, Dehradun.
4. Superintendent of Police, District Pauri Garhwal.

.....Respondents.

Present: Sri M.C.Pant &
Sri L.K.Maithani, Ld. Counsel
for the petitioner
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: JANUARY 15, 2014

(Delivered by Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. This claim petition has been filed by the petitioner to set aside the impugned order of dismissal dated 20.08.2008 (Annexure No. 1) passed by Superintendent of Police, Pauri Garhwal, appellate order dated 31.03.2009 (Annexure No.2) passed by Inspector General of Police, Garhwal Range and revisional order dated 17.02.2010 (Annexure No.3) passed by Additional Director General of Police (Administration), Uttarakhand. The petitioner has also prayed to treat the petitioner in continued service with all consequential benefits

including pay, seniority promotion etc. along with the pay of suspension period.

2. The brief facts of the case are that the petitioner was appointed in civil police on the post of constable in 2006 and posted at Police Station Mussorrie, District Dehradun under training and on probation. The petitioner was transferred from Dehradun to Pauri Garhwal on 06.09.2007 and was relieved on 22.09.2007. The petitioner did not join at Pauri and for his continuous absence thereafter, he was suspended on 12.02.2008. A charge sheet was issued to the petitioner on 02.04.2008 and the only charge against him was that after his transfer, he did not join at Pauri and continued to be absent in an unauthorized manner since 22.09.2007. The petitioner sent a reply on 04.04.2008 and mentioned that due to illness he could not join at Pauri and he remained ill continuously thereafter and submitted four medical certificates from 07.09.2007 to 01.04.2008 along with his reply. On the basis of report submitted by the inquiry officer on 14.07.2008, a show cause notice was issued to the petitioner by the Superintendent of Police on 15.07.2008 as to why he may not be dismissed from the service. The petitioner replied to show cause notice on 28.07.2008 and also appeared personally on 18.08.2008 for his statement in this respect. After considering the reply and statement, the petitioner was dismissed from the service on 20.08.2008. His appeal dated 15.11.2008 was rejected on 31.03.2009 and revision dated 29.06.2009 was also rejected on 17.02.2010.
3. The petitioner in his claim petition has challenged the orders passed against him mainly on the following grounds:
 - (a) The charge sheet was served to the petitioner by the inquiry officer and not by the disciplinary authority.
 - (b) DIG, Garhwal Range on application of petitioner's father had directed SSP, Dehradun on 22.09.2007 to relieve the petitioner after two months but in spite of this he was relieved and also S.P., Pauri had no jurisdiction to conduct the inquiry against him.
 - (c) Inquiry was conducted ex-parte against the petitioner. Neither the statements of the witnesses recorded during the course of enquiry

were supplied to the petitioner nor the doctors were examined to establish the genuineness of medical certificates.

(d) Notices were served on the father and brother of the petitioner which is not sufficient service under the rules.

(e) Punishment is too harsh and disproportionate to the charge.

(f) Orders against him are in violation of principles of natural justice.

4. In W.S./C.A. filed on behalf of the respondents no. 1 to 4, allegations of the petitioner have been vehemently opposed and it has been mentioned that the inquiry has been conducted under the rules following the due process of law and the petitioner has been rightly dismissed from the service for his gross indiscipline and utmost carelessness and willful absence from duties.

5. The petitioner filed the Rejoinder Affidavit reiterating the averments made in the claim petition. The petitioner also averred that the entire action against him is against the principles of natural justice, his absence from duty is not willful and his illness and medical certificates have not been duly taken into account.

6. We have heard learned counsel for the parties and perused the documents carefully.

7. Learned counsel for the petitioner has argued that the charge sheet to the petitioner must be served by the disciplinary authority/punishing authority but in this case the same has been signed and issued by the inquiry officer who is DSP, Pauri while the S.P is the competent authority for this purpose. Learned A.P.O. has contended that according to the Rule 7(4) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable in Uttarakhand State), the DSP is competent to inquire and issue the charge sheet. The said sub-Rule reads as follows:

“7(4) Subject to the provisions contained in these rules all Assistant Superintendent of Police and Deputy Superintendent of Police who have completed two years of service as Assistant Superintendent of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the powers to impose major punishments under Rule-4.”

Perusal of the above sub-Rule makes it clear that the Deputy Superintendent of Police may exercise powers of Superintendent of Police except the powers to impose major punishment. In the present case the dismissal order has been admittedly passed by the S.P. and not by the DSP. The said sub-rule authorizes DSP to issue the charge sheet and conduct the inquiry by exercising the power of SP and therefore, the contention of the learned counsel of the petitioner that the charge sheet could have been signed and issued by the SP only (and not DSP) is not acceptable and there is no illegality in signing and issuing charge sheet by DSP. Apart from that, the learned counsel for the petitioner could not demonstrate us that the service rules provide that the charge sheet would be served upon the delinquent by the appointing authority. In the absence of such rules, it is settled principle of law, Article 311 of the Constitution of India provides that the removal and dismissal of the delinquent on misconduct must be made by the authority not below the rank of appointing authority. However, it does not mean that the disciplinary proceedings cannot be initiated against the petitioner by the authority lower than the appointing authority. The Hon'ble Apex Court in the case of Ministry of Defence Vs. Prabhash Kumar Mirdha, 2013 (1) SCC (L&S), 121 has held at para 4 of the judgment which is as under:

“The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.”

In view of the above the contention of the petitioner is devoid of merit and there is no illegality in serving of the charge sheet by the officer below the rank of appointing authority.

8. Learned counsel for the petitioner has also contended that the father of the petitioner submitted an application to DIG, Pauri Garhwal

Rage in which transfer of the petitioner was requested to be cancelled due to serious illness of his son and DIG directed SSP, Dehradun on 22.09.2007 to relieve the petitioner after two months. He further contends that in spite of this the petitioner was relieved and therefore, the order of DIG was not complied with and because of stay of transfer order, the conduct of inquiry by SP, Pauri Garhwal is without jurisdiction. Perusal of record in files relating to departmental inquiry shows that the petitioner was transferred from Dehradun district to Pauri Garhwal district on 06.09.2007 and he was to be relieved by 15.09.2007. Since the petitioner was absent in an unauthorized manner during those days, he could not be relieved. The petitioner reported back on duty on 22.09.2007 and he was relieved the same time to join in Pauri District. The petitioner admittedly got relieved on 22.09.2007 to join in Pauri. In his letters dated 22.02.2008 and 14.03.2008 to SP, Pauri, he has admitted that after he was relieved to join in Pauri, he could not do so as he was not well. The petitioner therefore, has himself admitted his posting in Pauri and the jurisdiction of SP, Pauri. Even the petitioner did not join after expiry of this period of 2 months. The process of the action was taken after expiry of more than four months from the date of his relieving when he was suspended on 12.02.2008. Therefore, the contention of the learned counsel regarding DIG's stay order and jurisdiction of SP, Pauri is not of any help to question the legality of inquiry.

9. Learned counsel for the petitioner has also argued that the services of suspension on the father or brother of the petitioner is not the service under the rules. Thus, in the absence of actual service, the suspension is not proper and valid; hence vitiated; regarding 'service', it would be worthwhile to contend "Explanation" under Rule -16 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (Applicable in Uttarakhand State) which reads as under:

*"16.....**Explanation:** Where the Police Officer is contacted personally or the charge or the notice is sent to him by registered post at the address given by him as recorded in his character roll*

and at the place of his present stay, or sent to him by Special Messenger at the place of his present stay, and at the address given by him as recorded in his character roll it shall be presumed that reasonable steps have been taken to contact the Police Officer concerned.”

The learned counsel for the petitioner further contended regarding services of the notices on the father or brother may be examined in the light of the ‘Explanation’ under Rule 16 and the general law that the service should be established on the petitioner; the suspension order dated 12.02.2008 was sent at the residential address of the petitioner through a special messenger but the petitioner was not available at his residence and the suspension order was delivered to his father; the petitioner had come to know about the suspension order and wrote to S.P., Pauri on 22.02.2008. It is a settled principle of law that as soon as the punishment order had been awarded to the delinquent, the suspension order merges into the punishment order, so it is immaterial how the suspension order was served upon the petitioner.

10. The learned A.P.O. contended that various notices regarding inquiry proceedings were sent by registered post; one notice in respect of providing opportunity to cross-examine witnesses was sent to the petitioner by special messenger as well as by registered post on 02.05.2008; the special messenger delivered this to the brother of the petitioner as he was not available at his residence; after examining the inquiry files, there is no infirmity in servicing of various notices/orders pertaining to inquiry to the petitioner and ‘service’ is complete as per rules. Learned counsel for the petitioner refuted the contention.

11. Learned counsel for the petitioner also contended that the enquiry has not been conducted in a fair and proper manner. The statements of departmental witnesses have been recorded in the absence of the petitioner. The petitioner was not given the opportunity to cross-examine the witnesses and therefore, inquiry was conducted ex-parte violating the principles of natural justice. Learned A.P.O. vehemently opposed this argument and contended that the inquiry

has been conducted in fair and proper manner and in accordance with the rules. The petitioner was given full opportunity to cross-examine the witnesses but he preferred not to avail the same. The perusal of the inquiry files shows that the petitioner was sent letters on 02.05.2008, 19.05.2008, 31.05.2008, 20.06.2008 and 28.06.2008 by registered posts and through special messenger to participate in the inquiry proceedings and present his case as well as cross examine the witnesses. All these communications were duly served as per rules. It is therefore, clear that the petitioner was given due opportunity to defend himself at all stages of inquiry.

12. Only to ascertain as to whether the enquiry was conducted in accordance with law or not as to principles of natural justice had been adhered to by the enquiry office or not, the perusal of the original record reveals that the petitioner was served the charge sheet on 2.4.2008, therein it was stipulated that the reply of the petitioner should come within 15 days and no date was fixed for the said stipulation. Thereafter, on 2.5.2008, a letter/notice was sent to the petitioner by registered post fixing 13.5.2008 for the evidence of the witnesses of the department. The said notice was sent through registered post as it is revealed from the original record. The said letter was received back with an endorsement that the petitioner had gone out of his house and his address is not known to the person who informed the said fact. Thus, this letter received later on and the endorsement is of dated 12.5.2008. Meaning thereby, it would have received after the date fixed by the enquiry officer. The original record does not disclose that any special messenger has been sent to the said date, there is no service upon the petitioner on the date 12.5.2008. The enquiry officer without going through the service upon the petitioner, recorded the statement of two witnesses namely, Sri Prakash Devli, Line Inspector and Hamid Ali, Clerk of the Police Office, Pauri. There is no iota of fact on record that the petitioner appeared on the said date. Thus, the absence is further fortified the fact that there is no cross-examination with the witnesses on record. The notice had been sent by registered post as it reveals from the top of the letter dated 2.5.2008. Thereafter, the

enquiry initiated in the absence of the petitioner on 13.5.2008 and the witnesses were recorded and no right of cross-examination was given to the petitioner as he was absent. Thus, the entire enquiry is liable to be vitiated from the stage of the proceeding which was to be conducted on 13.5.2008.

13. In view of the above discussion, the punishment order as well as enquiry from the stages of the notice issued for recording the statements of witnesses and their cross-examination i.e. from the date 02.05.2008 onwards is liable to be quashed. The punishing authority, if so desires, may proceed with the enquiry from the stages 2.5.2008 and the punishing authority will also give sufficient opportunity to the petitioner to participate in the enquiry in accordance with law. The petitioner may be reinstated by the respondents if the disciplinary authority deems it fit, to proceed against him, he may be at liberty to suspend him from the service, if he deems fit. The back wages or the salary from the date of dismissal onwards shall be decided by the departmental authority according to the result of the enquiry.

14. The claim petition is disposed of accordingly. No order as to costs.

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

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

DATE: JANUARY 15, 2014
DEHRADUN

KNP