

**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. 43/2011

Sunil Kumar Sharma S/o Shri Trilok Chandra Sharma aged about 35 years R/o
M.D.D.A. Colony Kedar Puram, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, (Home), Civil Secretariat, Dehradun.
2. Additional Director General of P.A.C., Uttarakhand, Dehradun.
3. Deputy Inspector General of P.A.C., Uttarakhand, Dehradun.
4. Commandant 40th Battalion, P.A.C., Haridwar.
5. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: MARCH 11 , 2014.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. The petitioner has filed this petition for following relief:-

“It is therefore most respectfully prayed that the Hon'ble Tribunal may graciously be pleased to:

- i. To quash the order dated 15.4.2009 & 16.5.2009 passed by the Commandant 40th Battalion P.A.C. contained as Annexure 1 to this claim petition along with the order dated 5.5.2010 passed by the Deputy Inspector General of Police, P.A.C. Haridwar, order dated 15.12.2010, passed by Additional Director General of P.A.C., Uttarakhand, Dehradun and the order dated 4th March 2011 passed by

the Senior Superintendent of Police, Dehradun contained as Annexure 2, 3 and 4 respectively to this claim petition and all the consequential benefits be provided to the petitioner.

- ii. To command the respondents to pay to the petitioner full salary for the suspension period as the grounds on which the petitioner was suspended, as mentioned in the suspension letter dated 12.6.2007, were found false by the competent court.
 - iii. To pass any other further orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”
2. Brief facts of the case are that the petitioner was appointed on the post of Constable in P.A.C. on 13.2.1997 and he was transferred in different P.A.C. Headquarters during his service period. The petitioner proceeded to his home to Buland Shahar, U.P. for 13 days' leave on 7.4.2007. Leave was duly granted by the competent authority to him and he had to join at his headquarter on 20.4.2007. When the petitioner was due to return to Haridwar, his wife committed suicide by hanging herself on a hook of the roof at his house. In-laws of the petitioner lodged a report against the petitioner and all his family members U/Ss. 304(B) & 498(A) IPC and 3/4 of the Dowry Prohibition Act. Pursuant to the said FIR, the petitioner was arrested on 20.4.2007 by Police Station Bibi Nagar, district Buland Shahar. The rest of the family members, after the arrest of the petitioner, left from their house to avoid their arrest. The petitioner requested the Station Officer, Bibi Nagar, District Buland Shahar to inform about his arrest to the respondents and said information was sent on 20.4.2007 through wireless. Apart from that the petitioner has also alleged that Clerk Sri Amrish, Headquarter P.A.C., Haridwar also informed on phone on 20.4.2007 that the petitioner has to report for firing in the battalion. Sri Amrish was informed by petitioner's sister about the arrest of the petitioner. A registered letter was sent to the petitioner by the respondents at his village address on 28.4.2007. The said letter could not be delivered at the house of the petitioner and the letter was returned with the endorsement of the postman for non delivery of the letter. The suspension order was also served consequent upon the information of the department upon the petitioner on 20.6.07. Thereafter, the investigation was conducted by the

Police of Buland Shahar and the charge sheet was submitted to the Court. Additional Session Judge acquitted the accused after the trial on 19.11.2007 and immediately he was released from the jail. He proceeded to Haridwar to join the duty on 21.11.2007, but he was not permitted to join and he was asked to give the copy of the order of acquittal passed by the Ld. Session Judge on 19.11.2007. The petitioner, thereafter brought the copy of the judgment of acquittal and handed over to the Headquarter on 6.12.2007 and the petitioner was permitted to join his duties on 11.12.2007 and his suspension order was also revoked on 17.12.2007. In the meantime, a departmental enquiry was also initiated against the petitioner and the charge sheet was submitted to him. The petitioner submitted his reply to the enquiry officer and the enquiry officer after concluding the enquiry, submitted his report in January, 2009 to the Commandant 40th Battalion P.A.C., Haridwar. Thereafter a show cause notice was issued along with the enquiry report to the petitioner and thereafter the petitioner was punished by the Commandant, the punishing authority. He was placed in the minimum pay scale of the Constable for one year and he was granted leave without pay from 20.4.2007 to 11.12.2007 for the period of absence from duty. It was further held that he would not be allowed any salary or allowances during the period of suspension. The petitioner preferred an appeal before the Deputy Inspector General, P.A.C., which was dismissed by the appellate authority. Thereafter, he preferred a revision before the Additional Director General, P.A.C., in which his absence was converted into regular leave, if available and rest of the period was treated on leave without pay. The second punishment was retained to the effect that he shall remain in the last Constable's pay scale for a period of one year only. Pursuant to the order of the revisional authority, the S.S.P. ordered to convert 136 days' absence into casual leave and rest of the period was also granted leave without pay. Feeling aggrieved by the said order the petitioner has preferred this petition.

3. Respondents have filed counter affidavit/written statement and averred that the petitioner remained absent for 236 days without any information. It was further alleged that it was the bounded duty of the petitioner to inform to the P.A.C. Headquarter, Haridwar that he had

been implicated and arrested in a case U/Ss.304(B) &498(A) IPC in Bibi Nagar Thana, Buland Shahar. He did not inform to the respondents about his arrest on 20.4.2007. The enquiry officer has given proper opportunity to place his version before the enquiry officer and he has wrongly alleged that proper opportunity has not been given to the petitioner. A show cause notice was issued to him by the punishing authority, thereafter the enquiry report as well as the reply submitted by him was considered and a speaking order was passed by the respondents. The petitioner supported the order passed by the respondents.

4. We have heard Learned counsel for the parties and perused the record.
5. The petitioner firstly pleaded that the petitioner was a member of Police Armed Constabulary and his services were governed by the P.A.C. Act, 1948 which has a separate provision for punishment. The petitioner could not have been punished under the Punishment and Appeal Rules, 1991 applicable in Uttarakhand. The Police Armed Constabulary Act, in which the provisions of the punishment were provided which were of two folds; first the Section 8 provides the minor punishments; these punishments also prescribed the imprisonment in the quarter guard awarded by the Commandant or the other punishing authority as provided in the Act. The second fold is that Section 13 of the said Act provides the disciplinary actions may be taken against the Constabulary as provided under the Police Act, 1861. The Police Act, 1861 has been repealed by the Uttarakhand Police Act,2007. There is a repeal and a several clauses in the said Act. In sub clause (2) of Section 86 it is specifically provided that rules and regulations made under the provisions of the said Act (Indian Police Act 1861), so far it is not inconsistent with the provisions of this Act (Uttarakhand Police Act 2007), be deemed to have been made under the corresponding provisions of this Act and shall continue to be in force unless and until such superseded anything done or action taken under this Act. That means the Punishment & any Appeal Rules, 1991, which have been adopted by the State of Uttarakhand in 2002, are still in existence and the petitioner has been rightly punished under the said rules. The rules are applicable and we do not find any substance in the said plea.

Moreover, this plea was not pressed by the Ld. Counsels for the petitioner at the time of arguments.

6. Ld. Counsel for the petitioner further contended that the petitioner had not been given any opportunity of hearing and petitioner was not allowed to summon the witnesses or cross-examine the witnesses during the enquiry, hence the petitioner cannot be punished on the basis of said enquiry. Ld. A.P.O. refuted the contention of the Ld. Counsel for the petitioner.
7. We have also summoned the enquiry file from the department. Perusal of the record reveals that a preliminary enquiry was conducted by Sri Heera Vallabh Bhadola, Assistant Commandant, who submitted his report on 8.10.2008 to the Commandant, P.A.C., Haridwar who has specifically concluded that the perusal of the record and the evidence revealed that the petitioner did not report his duties on 20.4.2007 after completion of his leave, as such he has been absenting himself till then without any authority and he has not informed to the P.A.C., Headquarter that a case has been registered against him and he has been detained in the jail. On receipt of the said preliminary enquiry, the Commandant directed a departmental enquiry against the petitioner. The charge-sheet was prepared and it was served upon the petitioner on 20.10.2008 and the signatures of the petitioner were obtained on the said charge sheet and a copy thereof was given to him. Thereafter the petitioner submitted his reply to the charge sheet on 24.10.2008 and he has narrated the entire story about his absence as he has stated in his petition. He also admitted that he had not given any information to the P.A.C. Headquarter and due to the compulsion and pressure of mind he could not inform the P.A.C. Headquarter, Haridwar. He further stated that he did not want to cross-examine any witness in his favour and he requested the charge sheet may be dropped. He also alleged in his reply that he asked Incharge of the Police Station to inform about the incident and the involvement of the petitioner to his higher authorities. Thereafter enquiry was concluded by the enquiry officer holding him guilty and the report was submitted to the Commandant P.A.C. Headquarter, Haridwar. The report also indicates that the enquiry officer has also recommended the punishment in his report. Ld. Counsel for the

petitioner contended that the recommendation by the enquiry officer in the report itself is violative of fundamental rules. He should not have made the recommendation in the enquiry report. Ld. A.P.O. contended that the appendix annexed with the rules clearly indicates that the punishment can be recommended by the enquiry officer. At the most, if the enquiry officer has recommended the punishment, the said portion is void and the entire report cannot be set aside on that ground. It has been held in several decisions of the Courts that if the enquiry officer along with the report submits the recommendation, the recommendation should not be considered the part of the enquiry. In view of the above, contention of the Ld. Counsel for the petitioner has no substance.

8. After the receipt of the enquiry report, the show cause notice was issued, which is on record and the copy of the enquiry report was also annexed with the show cause notice. The petitioner submitted his reply alleging therein that the copy of the suspension order and his joining order be also provided to him and he may be granted 30 days' time for reply, which was allowed by the competent authority and both the copies were given to the petitioner vide letter dated 21.2.2009 and thereafter, one month's time was given to him and the reply was submitted in which he requested that he narrated the entire facts in his reply again and thereafter he said that his absence was not willful, hence his punishment, as proposed, may be rejected. The competent authority after going through the entire record, held that the explanation submitted by the petitioner is not satisfactory and it was further held that he did not discharge any duties w.e.f. 20.4.2007 to 11.12.2007 for 236 days, hence he was allowed leave without pay. Thus, there is no procedural fault in conducting of the enquiry, the fact that the petitioner remained absent from duty for 236 days, it is admitted case of the petitioner. Admitted facts need not to be proved whereas the absence was willful or it was not a subject matter of appreciation of evidence.
9. Ld. Counsel for the petitioner further prayed in his petition that the order of Additional Director General, P.A.C., Uttarakhand, Dehradun dated 15.12.2010 and the order dated 4.3.2011 passed by the Superintendent of Police, Dehradun contained in Annexure 3 & 4 respectively be also quashed; meaning thereby the petitioner is also aggrieved by the order of

Additional Director General, P.A.C, by which the petitioner's leave had been granted in lieu of the absence and the consequent upon the S. S.P., Dehradun passed the impugned order.

10. Ld. Counsel for the petitioner further contended that the punishing authority has awarded the punishment to the petitioner for all the charges compositely that he be placed in the minimum pay scale of the Constables for one year and secondly he was granted leave without pay from 20.4.2007 to 11.12.2007, the period when the petitioner was under suspension. Thus, it is composite order of punishment. The appointing authority should have passed the punishment separately for each of the charge. The petitioner has been charged on 17.10.2008_ for two misconducts. Firstly, the petitioner remained absent for 237 days from duties from 20.4.2007 to 11.12.2007 without any information and his absence was unauthorized. The second charge was framed that the petitioner was arrested in case crime No. 79/07 U/Ss.398A / 304B of IPC and 3/4 of Dowry Prohibition Act and he did not inform the higher authorities about his arrest. These two charges were replied by the petitioner and he had been punished by the punishing authority after due enquiry as mentioned above. It was contended that the punishing authority punished for the unlawful absence as well as for the non submission of the information to the department about his arrest by punishing him to place him in the lowest pay scale of the Constables for one year and his leave was regularized without pay for the period of absence.
11. It is to be decided as to whether the absence of the petitioner was willful or not. It is an admitted fact that the petitioner was arrested on 20.4.2007 and he was acquitted by the Court on 19.11.2007 and thereafter he was released from jail on 20.11.2007 and thereafter he joined duties after obtaining the copy of the judgment on 11.12.2007 and his suspension was revoked on 17.12.2007. It is an admitted fact that he was in jail and he remained absent from duties due to the above circumstance. It cannot be said that the absence was willful. The Hon'ble Apex Court in the case of **Krushankant Parmar Vs. Union of India 2012 (3) SCC 178 in Paragraphs 17, 18 & 19** has held as under:-

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

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

19. 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 that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.”

In the aforesaid judgment Hon’ble Apex Court has clearly laid down that it is the duty of the State to prove the fact that the absence was willful, if it is not willful, it cannot be held to be a grave misconduct. In this case it is a proved fact that the petitioner was compelled to remain out of duty and it was beyond his control as he was confined in jail in a criminal case which was later on terminated in acquittal in favour of petitioner. Thus, the above judgment of the Hon’ble Apex Court is clearly applicable in this case.

12. Both the charges which have been framed against the petitioner are interconnected with each other . The unauthorized absence and non information of being in jail in a criminal case are connected matters, as we have pointed out that the petitioner’s absence was not willful.
13. Now the second charge remains against the petitioner that he has not informed to the authorities about his arrest and detention in case crime No. 79/2007 under Sections 498A/ 304 B and 3/4 of Dowry Prohibition Act at Bibi Nagar, District Buland Shahar. As we have

pointed out earlier that it was not within the control of the petitioner to join the duties at P.A.C. Headquarter, Haridwar because he had already been confined to jail. The petitioner has made an averment to the effect in Para-8 of the petition that he requested the Station Officer of the Thana Bibi Nagar, Buland Shahar to inform the respondents about the arrest of the petitioner and the S.O., Thana Bibi Nagar District Buland Shahar accepting his request informed the respondents through wireless. Thereafter he has stated in Para 9 & 10 that Clerk Sri Amrish of the Headquarter P.A.C., Haridwar also informed on phone on 20.4.2007 only to inform that the petitioner has to report for firing in the battalion and he was informed by petitioner's sister about the arrest of the petitioner which Sri Amrish communicated to the Commandant of the Battalion. A registered letter was sent to the petitioner by the respondents at his village address on 28.4.2007. The said letter could not be delivered at the house of the petitioner and the letter was returned with the endorsement of the postman for non delivery of the letter. Reply thereof has been received in W.S. in Para 8,9 & 10. In reply of the Para 8 respondents have stated in Para 8 of the W.S. that it was the duty of the petitioner to inform the department and he should have asked the Jail Superintendent and the Court to send information to the Headquarter but the respondents have not clearly stated or denied as to whether he received any communication from the S.O. Bibi Nagar or not. In Para 10 of the W.S, reply of Para 10 of the claim petition has been given that the petitioner was aware about the registered letter and inspite of that he had not informed directly to the respondents about his arrest. Thus, the information which has been sent by the S.O., has not been specifically denied in the W.S. It is settled principle of law, if a fact has not been denied in the pleadings or has been denied vaguely, that fact deemed to be admitted. So this fact is clearly established that the petitioner requested to the S.O. and the S.O. informed the department by way of wireless. Apart from that there is Rule 503 of the Police Manual in which any Police Official, who being on leave, is arrested on a criminal charge in a district other than that to which he is posted, the Superintendent of the concerned district will inform the

Superintendent of the other district. Rule 503 of the Police Regulation is quoted as under:-

“ If a Police Officer, not being on leave, is arrested on a criminal charge in a district other than that to which he is posted, the Superintendent of the district in which he has been arrested shall inform the Superintendent of the district to which he is posted.”

14. Thus, it is apparent that on 20.4.2007 the petitioner was on leave and it was the bounded duty of the Police Department to inform the S.P. or P.A.C. Headquarter about his arrest.
15. There was no evidence on record that the petitioner's absence was unauthorized and he did not inform to the authorities about his arrest. Thus, the findings recorded by the enquiry officer as well as the punishment order passed by the punishing authority and the other impugned orders based on such perverse evidence are liable to be set aside and it is concluded that the petitioner is not guilty of any charge.
16. Apart from that the punishing authority has also punished him for the same by granting him leave without pay and he was deprived of the salary for the said period. In revision, the Additional Director General, P.A.C. modified the order and awarded a punishment placing the petitioner in the lowest pay scale of the Constables. Apart from that for the absence, the petitioner was given a punishment, his absence was adjusted against his leave. Pursuant to the said order, the Commandant, P.A.C., Haridwar passed an order on 6.1.2011 that the petitioners absence may be adjusted towards the leave. Copy of the said order was sent to the S.S.P., Dehradun. Pursuant to the said order the S.S.P., Dehradun passed the order which is annexed as impugned order in the claim petition. It is also clearly revealed that on one side the absence leave has been regularized and it was not the intention of the revisional authority that this order should be passed only to regularize the leave period of the petitioner. We are aware that if any order, after the punishment order has been passed regarding the regularization of the leave, it would not be amounted to relieve the delinquent from his liability of punishment, but in this case the punishment for absence has been awarded to regularize the absence by way of leave and as such it seems that he has been exonerated from the first charge.

17. The petitioner has challenged this part of the order before the Tribunal. It is clear that the petitioner has been exonerated rightly or wrongly by the revisional authority regularizing his period of absence from leave. It is also clear that the punishment order of the punishing authority as well as the appellate authority has regularized the illegal absence by way of non payment of salary but the revisional authority reversing the order, regularized the period by way of adjusting the leave for the unauthorized absence. This question has attained finality and this punishment order has not been challenged by the State before the authority by any independent petition. The matter, which has attained finality, cannot be re-agitated. It is also clear that the above orders have been passed by the punishing authority and revisional authority by way of exonerating the petitioner. The punishing authority after passing the punishment order on 16.5.2009, passed an order under Rule 54(A) of the Fundamental Rules (which is on original file) that the petitioner will not get any further salary and allowances during the suspension period, which has already been received by him. He has further ordered that the suspension period would not be counted towards his pension, promotion, leave etc, thus, the petitioner was treated on duty. Thus, this order clearly reflects that the petitioner has been exonerated by him., but there is no such averment either from the respondents or any such communication has been filed best known to the respondents. Thus, in the case of the arrest of a public servant, it is obligatory on the part of the Police Department to send an information. So it cannot be said that the said information has not been received to the respondents. Apart from that the original file received, after getting an information by the registered letter which was sent to the petitioner to join the duties also indicates the arrest of the petitioner and the enquiry was started thereafter. Thus, it is apparent that the information to the P.A.C. Headquarter, Haridwar was sufficient and in accordance with law. The information was imputed by them, hence the petitioner is liable to be exonerated from charge No.2.
18. Apart from that, petitioner's absence was not willful, hence he is liable to be exonerated from the said charge. The Police Department has regularized his absence vide order dated 15.12.2010 by the Additional

Director General, P.A.C. whereas the punishing authority passed two different orders; one under Rule 54 B of Financial Handbook on the same day and the other punishment by way of the impugned order passed separately under Rule 54 B of Financial Handbook, which is in the original file.

19. Ld. Counsel for the petitioner has not challenged the validity of the said order before the Court, but the revisional order has also revised the said order by punishing him regularizing his leave for unauthorized absence. In view of the above the petition is liable to be allowed.
20. Ld. Counsel for the petitioner pointed out that the punishing authority framed only two charges against the petitioner. The punishing authority has awarded one composite punishment to keep him at the lowest of the Constable's salary for one year and the second punishment which has been awarded for the unauthorized absence for 236 days, that he will not get the salary for the said period under the Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Thus, the order does not reveal as to whether he passed the order of sanctioning the leave under Rule 54 (B) of Fundamental Rules of Financial Handbook or it is a punishment order for the unauthorized absence of the petitioner. He further relied upon the order passed by the punishing authority on 16.5.2009 which is on the original record in which it has been ordered by the punishing authority that he will not get any salary and allowances during the suspension period and the amount which he has already received during the said period, will not be returned by the petitioner and the period of suspension would not be counted towards the pension, promotion and leave. He further contended that Section 54(B) of Fundamental Rules clearly provides that the punishing authority could pass the order about the suspension period while reinstating the delinquent. The order, by which the petitioner was reinstated clearly provides that the period of suspension about the salary and allowances would be passed separately. Thus, this order has been passed definitely on the different date. Ld. Counsel for the petitioner further contended that if the authority has passed the order regarding the pay and allowances separately, there was no need to find place in the punishment order by way of punishment. He further

contended that Rule 54 (B) (6) clearly provides that where suspension is revoked, pending enquiries of the disciplinary Court proceedings, any order passed regarding the payment of salary of the delinquent before the conclusion of the proceedings can be reviewed on its own motion after conclusion of the proceedings by the authority. He had the power to review it after the pronouncement of the punishment order. If the regularization of leave order was passed after the punishment order, then the order does not reflect that there is any review of earlier order. Thus, both the orders are independent one and are identical. Ld. Counsel for the petitioner further contended that the punishment order clearly reveals that the salary has been withheld by way of punishment and the punishment which can be awarded, has been prescribed in Rule 4 of the Punishment Rules in which there is no deprivation of salary for the period of absence, is not either major or minor punishment in the rules. As such the punishing authority cannot award the said punishment for the unauthorized absence. Likewise, the revisional authority has no right to convert the said period into leave. Both the orders are illegal and are not sustainable in law. It was further contended that before passing any order under Section 54(B), the petitioner should have been given an opportunity to be heard. Such opportunity has not been given, as such the order is also violative of principle of natural justice. He further contended that the order under Section 54 (B) can only be passed after conclusion of the enquiry and after delivering the punishment order. The Section 54(B)(6) clearly emphasizes the said fact. Thus, the order is not in accordance with law. Ld. A.P.O. refuted the contention.

21. After going through the entire record, we are completely in agreement with the contentions of the Ld. Counsel for the petitioner. Ld. Counsel for the petitioner had correctly narrated the factual matrix of the case in this matter. The Hon'ble Apex Court in **Para 6 & 7 of M. Gopalkrishna Naidu Vs. State of M.P. (1968)1SCR 355** has held as under:—

“(6) *It is true that the order under FR. 54 in a sense a consequential order in that it would be passed aft an order of reinstatement is made. But the fact that it is a consequential order does not determine the question whether the government servant has to be given an opportunity to show cause or not. It is also true 359 that*

in. a case where reinstatement is ordered after a departmental inquiry the government servant would Ordinarily have had an opportunity, to show: cause. In such a case, the authority no doubt ,would have before him the entire record including the explanation given by the government servant from which all the facts and circumstances of the case would be before the authority and from which he can form the opinion as to whether he has been fully exonerated or not and in case of suspension whether such suspension was wholly unjustified or not. In such a case the order passed under a rule such as the present Fundamental Rule might be said to be a consequential order following a departmental inquiry. But there are, three classes of cases as laid down by the proviso in Art. 311 where a departmental inquiry would not be held, viz., (a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, (b) where the authority empowered. to dismiss or remove person or to reduce him in rank is satisfied for reasons to be record in writing that it is not reasonably practicable to hold such an inquiry; and (c) where the President or the Governor as the case may be is satisfied, that in the interest of security of the State it is not expedient to hold such inquiry. Since there would be no inquiry in these classes of cases the authority would not have before him any explanation by the' government servant. The authority in such cages would have to consider and pass the' order merely on such facts which might be placed before him by the department concerned. The order in such a case Would be ex- parte without the authority having the other side of the picture. In such cases the order that such authority would pass would not be a consequential order as where a departmental inquiry has been held. Therefore, aft order passed under Fundamental Rule 45 is not always a consequential order nor is such order a continuation of the departmental proceeding taken against the employee.

(7) It is true as Mr. Sen pointed out that F.R. 54 does not in express terms lay down that the authority shall give to the employee concerned the opportunity to show cause before he passes the order. Even so, the question is whether the rule casts such a duty on the authority by implication. The order as to whether a given case falls under cl. 2 or cl. 5 of the Fundamental Rule must depend on the

examination by the authority of all the facts and circumstances of the case and. his forming the opinion therefrom of two factual findings; whether the employee was fully exonerated and in case of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect the government servant adversely if it is one made under cls. 3 and 5. Consideration under this rule depending as it does on facts and circumstances in their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice.”

22. Thus, the orders which have been passed by the punishing authority as well as by the revisional authority for awarding the punishment by way of adjusting leave for granting him salary, such orders cannot be made in the punishment order. Thus, the punishments awarded to the petitioner are liable to be quashed. Whereas the question granting the allowances, salary and leave is concerned, as per the Rule 54(B) the punishing authority will pass the separate order after giving him the show cause notice.
23. In view of the above, we conclude that the respondents failed to prove both the charges against the petitioner, as such the petitioner is entitled to be exonerated from the charges. Whereas, the payment of salary, allowances etc is concerned, that will be determined by the punishing authority giving the petitioner as show cause notice preferably within a period of 4 months after receiving the copy of this order.

ORDER

The petition is partly allowed. The order dated 15.4.2009 passed by the Commandant 40th Battalion P.A.C, order dated 5.5.2010 passed by the Deputy Inspector General of Police, P.A.C., Haridwar, Order dated 15.12.2010, passed by Additional Director General of P.A.C. & order dated 4.3.2011 passed by the Sr. Superintendent of Police, Dehradun contained as Annexure Nos. 1,2, 3 & 4 respectively are

hereby quashed. The petitioner is exonerated from the charges leveled against him. The matter is remitted back to the punishing authority as to determine the salary, allowances etc. as provided in the Fundamental Rules after giving him a show cause notice. The petition is decided accordingly. No order as to costs.

Sd/-

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

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: MARCH 11 , 2014
DEHRADUN

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